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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] 39

J. R. WHEELER, Petitioner,

vs.

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin.

ON CERTIORARI TO C. C. A. 7TH CIRCUIT.

PETITIONER'S BRIEF.

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STATEMENT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 711

J. R. WHEELER, Petitioner,

vs.

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin.

ON CERTIORARI TO C. C. A. 7TH CIRCUIT.

STATEMENT

MAY IT PLEASE THE COURT:

This cause is here on certiorari to review a judgment of the Circuit Court of Appeals for the Seventh Judicial Circuit. (Rec., 22.) The judgment to be reviewed reversed a judgment of the District Court of the United

States, for the Eastern District of Wisconsin, that dismissed the complaint of Greene, Receiver of Bankers Joint Stock Land Bank of Milwaukee. The receiver sought to enforce petitioner's alleged liability as a shareholder of the said bank to creditors.

The District Court rendered no opinion, but dismissed Greene's complaint (after demurrer) upon the ground that it failed to state sufficient facts to constitute a cause of action. That court held that the Federal Farm Loan Board could not empower its receiver to enforce Wheeler's liability (as a shareholder of Bankers Joint Stock Land Bank of Milwaukee) to *creditors*.

The Circuit Court of Appeals held that the said Board could so empower its receiver. For the opinion of that court see *Greene* v. *Wheeler*, 29 Fed. (2d) 468, pp. 14-22 of the record.

This conflict between the two lower courts gives rise to the real question to be decided by this Court, which is—

> Shall the Federal Farm Loan Act, which in effect provides, not only that the liability of shareholders of Joint-Stock Land Banks to *creditors* shall be enforced by *creditors*, but that it shall *not* be enforced by *receivers* appointed by the Federal Farm Loan Board, *stand as passed by the Congress*, or shall the *amendment* of the said act by the Circuit Court of Appeals be accepted?

JURISDICTION OF THIS COURT.

Section 240 (a) of the Judicial Code, as amended (28 U. S. C. A. § 347)[1], amply sustains the jurisdiction of this court. That the District Court had jurisdiction of the controversy, please see page 7, *infra*. The date of the judgment sought to be reviewed is December 13, 1928. (Rec., 22.) Wheeler's petition for certiorari was filed herein on February 21, 1929. (Rec., 23.) On April 15, 1929, the petition was allowed, and at the same time the cause was advanced for argument. (Rec., 22-3.)

Unquestionably, the petition was providently allowed. As shown on page 5 of the aforesaid petition, there are a great many Federal Joint Stock Land Banks, Federal Land Banks, and Farm Loan Associations with liabilities in excess of $1,000,000,000. A number of them are in the hands of receivers appointed by the Federal Farm Loan Board. It is of the utmost importance that this court determine whether shareholders' liability to creditors shall be enforced by creditors, as provided by the Congress, or by receivers appointed by the Board, as determined by the Circuit Court of Appeals.

---

1. "(a) in any case * * * in a Circuit Court of Appeals * * * it shall be competent for the Supreme Court of the United States, upon petition of any parties thereto * * * to require by certiorari * * * that the cause be certified to the Supreme Court for determination by it with the same power and authority and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

SOME ESSENTIAL FACTS.

The Federal Farm Loan Act provides that shareholders of every joint-stock land bank shall be held

> "individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares." (12 U. S. C. A. § 812.)

Of course this liability runs to *creditors,* and not to the *bank.* And of course only the persons to whom this liability runs, may enforce it, in the absence of an express provision to the contrary.

The act also provides that the Federal Farm Loan Board may declare joint-stock land banks insolvent and place them in the hands of a receiver "upon default of any obligation," *and that "proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations."* (12 U. S. C. A. § 963.)

It is admitted that petitioner (a citizen of the Eastern District of Wisconsin) owns 50 shares, of the par value of $100 a share, of the capital stock of Bankers Joint Stock Land Bank of Milwaukee; that the said bank was duly organized under the Federal Farm Loan Act, and that respondent was appointed receiver of said bank by the Federal Farm Loan Board. (Rec., 1.)

Section 961 of 12 U. S. C. A. provides for the appointment of receivers of national farm loan associations and defines their powers and duties. So far as it is rel-

evant to "proceedings * * * had" by receivers of joint-stock land banks said section is as follows:

> "Such receiver, under the direction of the Federal Farm Loan Board, shall take possession of the books, records, and assets of every description of *such association* [*joint-stock land bank*], collect all debts, dues and claims belonging to *it*, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and on a like approval or order, may sell all the real and personal property of *such association* [*joint-stock land bank*], on such terms as the Federal Farm Loan Board or said court shall direct."

(Shareholders' liability to creditors is not a *corporate* asset. The Court will observe that the foregoing section *prohibits* the power claimed by the respondent in the case at bar, *because it does not grant it.* There is no other section that conflicts with the foregoing section.)

It is also admitted that the Federal Farm Loan Board levied an assessment upon the shareholders of Bankers Joint Stock Land Bank of Milwaukee in the sum of $1,200,000 (the amount of the par value of all the shares of capital stock of said bank issued and outstanding), to be paid equally and ratably by the shareholders; that the Federal Farm Loan Board directed the respondent to sue all shareholders who should refuse to pay; that demand was made on petitioner for $5,000, which he refused to pay, and that respondent brought this action at law against petitioner to collect said amount. (Rec., 2.)

The facts above stated were all properly before the District Court (complaint, Rec. 1; demurrer, Rec. 4; demurrer sustained, Rec. 6; plaintiff's refusal to plead further, Rec. 6-7; judgment for defendant, Rec. 7), and

all questions were properly saved for review by the receiver.

Wheeler's demurrer to the receiver's complaint raised the following question in the District Court:

> Did the Federal Farm Loan Board's direction to its receiver to collect from petitioner his proportion of the assessment levied by said Board on shareholders of Bankers Joint Stock Land Bank of Milwaukee, *empower* the aforesaid receiver to collect said amount, or was the direction null and void?

We should perhaps state that the Federal Farm Loan Act (12 U. S. C. A. § 831) after providing that the Federal Farm Loan Board shall have power

> (a) to organize and charter Federal land banks, etc.,
>
> (b) to review and alter interest rates,
>
> (c) to grant or refuse authority to issue bonds,
>
> (d) to make rules and regulations as to charges on loans,
>
> (e) to require reports, etc., and to examine banks, etc.,
>
> (f) to prescribe form and terms of bonds and surety bonds,
>
> (g) to regulate payments between banks,
>
> (h) to suspend or remove directors, registrars, appraisers, and examiners,
>
> (i) to exercise general supervisory over banks,

also provides that the said Board shall have power

> (j) to exercise such *incidental* powers as shall be necessary or requisite to *fulfill its duties and carry out the purposes of this chapter.*"

(See Appendix, pp. 103-4, *infra*, for this section in full.)

JURISDICTION OF DISTRICT COURT.

The District Court had jurisdiction to pass upon the receiver's claim under Section 24 (1) of the Judicial Code as amended, since the matter in controversy exceeded, exclusive of interest and costs, the sum of $3,000, and arose under the laws of the United States. (28 U. S. C. A., Sec. 41.) Moreover, the receiver was an officer of the United States.

Gibson v. *Peters*, 140 U. S. 342, 14 S. Ct. 134, 37 L. ed. 1104.

Speckar v. *German Nat. Bank*, 85 Fed. 12.

Schofield v. *Palmer*, 134 Fed. 753.

Thompson v. *Pool*, 70 Fed. 725.

And while this officer was not as a matter of fact "authorized by law to sue," since the Federal Farm Loan Board's attempt to so authorize him was null and void, he *claimed* that he was authorized to sue. The District Court, therefore, also had jurisdiction to pass upon the aforesaid claim. (Section 24 (1) of the Judicial Code as amended.)

ERROR INTENDED TO BE URGED.

The only error we intend to urge here may be stated as follows:

> The Circuit Court of Appeals erred in holding that the Federal Farm Loan Board could empower its receiver to enforce shareholders' liability to creditors.

The foregoing proposition not only (a) postulates that the receiver is without inherent power to maintain an action to enforce shareholders' liability to creditors, and (b) challenges the authority of the Board to empower him to do so, but (c) also denies that the Board has the power to determine the amount of shareholders' liability to creditors.

We submit that the specific proposition (b)—*the Federal Farm Loan Board is without authority to empower its receiver to enforce shareholders' liability to creditors*—is, alone, *decisive* of this case, for the following reasons:

> The receiver seeks to enforce Wheeler's alleged liability to creditors, and tenders the order of the Federal Farm Loan Board fixing the amount and directing him to enforce the liability as proof of his alleged right to maintain his action. Wheeler demurs on the ground that the receiver's complaint does not state sufficient facts to constitute a cause of action. (R. 5.) The essence of this demurrer is, that "in no event and under no circumstances, and in no capacity, does the plaintiff own or represent the cause of action sought to be enforced." *McKenney* v. *Monahan,* 119 Wis. 651, 97 N. W. 489, 491. (See also 31 Cyc. 296, 289-90, and cases cited.)
>
> Manifestly, the receiver's alleged ownership or representation of the cause of action sought to be enforced must rest upon that part of the order that

directs the receiver to sue, and not upon the part that undertakes to fix the amount of the statutory liability. A mere order fixing the aforesaid amount, without more, could in no way create a legal relation between the receiver and the defendant, whether the order was valid or invalid. Something more would be necessary to vest in the receiver the ownership of the alleged cause of action sought to be enforced, or to authorize him to represent it, *viz., an order directing him to sue.*

This is true because (a) Greene is *not* a creditor, and (b) under § 961 of 12 U. S. C. A., Greene, as *receiver,* is a mere *custodian* of the *corporation's* property and assets. He has no *title* even to them. Clearly, an order of the Board directing him to enforce shareholders' liability is essential.

Kennedy v. *Gibson,* 8 Wall. 498.

1 Tardy's Smith on Receivers, § 338, p. 845.

Rhodes v. *Hilligass* (Ind.) 45 N. E. 666.

Lafayette Bank v. *Buckingham,* 12 Ohio St. 419, 425.

Sterrett v. *Second Nat. Bank,* 246 Fed. 753, 248 U. S. 73.

Great Western Mining and Manufacturing Co. v. *Harris,* 198 U. S. 561.

And the order in question must be *valid,* since to create a legal relation between Greene, as *receiver,* and petitioner it is necessary that the Board *have the power to authorize its receiver to enforce shareholders' liability to creditors.*

If the Board has the power to enforce through its receiver shareholders' liability to creditors, then it might have the incidental power to determine the amount of that liability. But if, on the other hand, the Board is without power to enforce shareholders' liability to creditors, we need not concern ourselves with whether it has power to assess shareholders.

The cause will have been decided, and the question last mentioned will have become wholly academic.

Because the National Bank Act expressly provided that a receiver of an insolvent national bank appointed by the Comptroller of the Currency might under the latter's direction,

> "if necessary to pay the debts of such association, enforce the individual liability" of stockholders to creditors

this Court held that the order of the Comptroller, declaring to what extent the individual liability of the stockholders should be enforced, was conclusive, and that it might be made before the amount of the debts was known, even though the power to assess stockholders had not been expressly granted.

Kennedy v. *Gibson,* 8 Wall. 498.

Casey v. *Galli,* 94 U. S. 673.

In short, the Federal Farm Loan Board either has or has not the power to authorize its receiver to enforce shareholders' liability to creditors. And it is too clear for argument that if the Board is without power in the premises, this action must be dismissed.

But the Board's demonstrable lack of power to determine the amount of shareholders' liability to creditors is also important. Since the Federal Farm Loan Act does *not* provide that a receiver appointed by the Federal Farm Loan Board may, under the latter's direction,

> "if necessary to pay the debts of such association, enforce the individual liability of shareholders to creditors,"

it necessarily follows that the power of the Board to assess shareholders does not exist as an *incidental* power. It is also a fact that the Federal Farm Loan Act does not *expressly* empower the Federal Farm Loan Board to assess shareholders. *Necessarily the power in question does not exist.*

And the failure of the Congress to grant the power, either directly or indirectly, conclusively demonstrates that the Congress intended that shareholders should have a day in court and be heard upon the question of the amount of their liability, if any, to creditors. *This accounts for the radical differences between the National Bank Act and the Federal Farm Loan Act.* These differences are pointed out in the course of our argument. (Pages 86-91, *infra.*)

We might well contend that the receiver's complaint does not "sufficiently set forth the facts necessary to warrant the appointment of a receiver" or facts showing the necessity of enforcing the liability of shareholders to creditors, and cite

Kennedy v. *Gibson,* 8 Wall. 498

Casey v. *Galli,* 94 U. S. 673

in support of our argument. In fact, the complaint herein is extremely informal. It is 'simplified' pleading *à outrance.* However, we have not come before this Court to have settled a mere matter of code pleading, particularly when the defects of respondent's complaint, if any, are amendable, and the receiver was appointed back in 1927. (Rec., 1.) Whether the Federal Farm Loan Board can empower its receivers to enforce shareholders' liability to creditors is the substantial question in this case. Unquestionably that is the question that this Court intended to decide when it granted the writ in the case at bar, because the public interest demands that it be authoritatively settled.

HISTORY OF THE FEDERAL FARM LOAN ACT.

There are other facts that are essential to a complete understanding of this case. They are (a) the pre-law history of the Federal Farm Loan Act, (b) sections of acts *in pari materia,* and (c) proposed amendments to the Federal Farm Loan Act. We think that they should be set forth here rather than during the argument. These facts demonstrate that the Congress *purposely* withheld from the Federal Farm Loan Board the powers which the Circuit Court of Appeals granted to it by means of what Austin called "spurious interpretation," which "is not *interpretation,* but a process of legislative amendment, or a process of legislative correction" that "lays all statute law at the arbitrary disposition of the tribunals." (2 Austin's Jurisprudence, 4th ed., Lecture XXXVII, p. 650.)

Pursuant to an act approved on March 4, 1913, the President appointed the United States Commission "to investigate and study in European countries co-operative land-mortgage banks, co-operative rural-credit unions, and similar organizations and institutions devoting their attention to the promotion of agriculture and the betterment of rural conditions."

On January 29, 1914, this Commission, composed of the gentlemen mentioned below,[2] made a report, which was accompanied by a proposed bill and the Commis-

2. Duncan U. Fletcher, Chairman
Thomas P. Gore
Ralph W. Moss, Vice Chairman
John Lee Coulter, Secretary
Kenyon L. Butterfield
Clarence J. Owens

sion's interpretation of it. (Cong. Rec. Vol. 51, Part 3, p. 2486 *et seq.*) As will hereafter appear, the following excerpt from the statement made by the Commission is significant:

> "As against the central bank idea, the bill suggested by the commission affords competitive banking. It is founded on American models. *It is based, to a large extent, on the plan of our national banking system, changed as the commission deemed wise to overcome the difficulties which had theretofore been shown to attach to the national banking plan.*" (Ibid. p. 2490, 2nd column, 5th par.)

Section 31 of the suggested legislation provided for the so-called "double liability" of shareholders to creditors. (Ibid. p. 2498.) Instead of a board, the suggested legislation provided for the appointment of a commissioner of farm-land banks. It is significant that it was proposed that this commissioner might forfeit charters and liquidate national farm-land banks in accordance with such rules as he should devise, subject, of course, to the provisions of the suggested legislation.[3]

Subsequently a Joint Committee of the two Houses of Congress was appointed pursuant to an Act approved on March 4, 1915. This committee was known as the Joint Committee on Rural Credits. The Honorable Carter

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3. "Sec. 10. That the commissioner of farm-land banks is authorized and empowered, upon proper application to issue charters or certificates of incorporation for the establishment of national farm-land banks as herein provided for, and to exercise supervision and control over, and make examinations of, all of the national farm-land banks established under this Act, under such general rules as may be provided; and to withdraw or forfeit such charters or liquidate such banks whenever necessary, in accordance with rules to be provided, subject in all respects to the requirements and provisions herein contained." (Ibid. p. 2496.)

Glass, House Chairman of the Committee on Banking and Currency, was its chairman. The names of the other members of the committee are set forth in the margin.[4]

Some sixty or more bills dealing with the matter of rural credits having been introduced since August, 1913, the Joint Committee above mentioned "was charged with the duty of considering all proposals theretofore made, and the whole subject with instructions to report a bill by January 1, 1916." (Cong. Rec. Vol. 53, part 4, p. 3543.)

On January 4, 1916, the chairman of the Subcommittee on Land Mortgage Loans made a report to Honorable Carter Glass recommending the passage of the bill that accompanied the report. The bill is described somewhat in detail, but is not printed in the Congressional Record. (Cong. Rec. Vol. 53, part 1, p. 452, *et seq.*) It formed the basis of the bill that subsequently was enacted. It provides for a board instead of a commissioner; for joint-stock land banks, double liability of stockholders, the appointment of receivers, etc. (Ibid., p. 455.) That committee reported that it had had the constant advice and co-operation of Senator Fletcher.

The Joint Committee asked for, and was granted, some four months' time to file an additional report. (Ibid. pp. 455-6.) Subsequently a bill was introduced (Senate Bill 2986); and after protracted debates, amend-

4. Robert L. Owen
Henry F. Hollis
Thomas P. Gore
Hoke Smith
Knute Nelson
James H. Brady
Michael F. Phelan
Asbury F. Lever
Ralph W. Moss
Everis A. Hayes
Willis C. Hawley

ments, conference reports, etc., it was finally enacted and was approved by the President on July 17, 1916. (See Cong. Rec. Vol. 53, Part 8, p. 7396, *et seq.*; Vol. 53, Part 10, pp. 9859, *et seq.*; p. 10093, *et seq.*)

The bill and the proposed amendments with respect to the appointment of receivers and their powers are significant. All of them provide that shareholders of joint-stock land banks shall be liable to creditors; all of them provide for the appointment of receivers; all of them define the powers of both the Federal Farm Loan Board and its receivers, *but none of them expressly empower either the board to authorize receivers to collect, or the receivers to collect, or the board to fix the liability of shareholders to creditors.* (Cong. Rec. Vol. 53, Part 8, p. 7402; Ibid., Part 10, pp. 9867-8, 10101.)

That the failure to grant these powers either to the board or to its receivers was not due to inadvertence may be conclusively demonstrated by means of a comparison of certain sections of the Federal Farm Loan Act with parallel sections of The National Bank Act. As stated by Senator Fletcher, the latter act served as a guide to the framers of the former act.

SECTIONS OF ACTS IN PARI MATERIA.

We set forth on parallel pages the provisions of both the Federal Farm Loan Act and The National Bank Act with respect to the appointment and the powers and duties of receivers. The sections given are those used in 12 U. S. C. A.

"§ 961. **Insolvency of farm loan associations; receivers; powers and duties.** *Upon receiving satisfactory evidence* that any national farm loan association has failed to meet its outstanding obligations of any description the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: *Provided,* That no national farm loan association shall be declared insolvent by said board until the total amount of defaults of current interest and amortization installments on loans indorsed by national farm loan associations shall amount to at least $150,000 in the Federal land bank district, unless such association shall have been in default for a period of two years. *Such receiver, under the direction of the Federal Farm Loan Board, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such association, on such terms as the Federal Farm Loan Board or said court shall direct.* (July 17, 1916, c. 245, § 29, 39 Stat. 381.)

§ 962. **Disposition of moneys collected by receiver; reports.** Such receiver shall pay over all money so collected to the Treasurer of the United States, subject to the order of the Federal Farm Loan Board, and also make report to said board of all his acts and proceedings. The Secretary of the Treasury shall have authority to deposit at interest any money so received. (July 17, 1916, c. 245, § 29, 39 Stat. 381.)

§ 963. **Insolvency of land banks, receivers, powers and duties.** Upon default of any obligation, Federal land banks and joint stock land banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations. (July 17, 1916, c. 245, § 29, 39 Stat. 381.)"

"§ 192. **Default in payment of circulating notes.** On becoming satisfied, as specified in sections 131 and 132, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. *Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct;* **and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders.** Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings." (R. S. 5234; May 15, 1916, C. 121, 39 Stat. 121.)

(PROVISIONS FOR DISPOSITION OF MONEYS COLLECTED.)

"§ 812. **Individual liability of shareholders.** Shareholders of every joint-stock land bank organized under this chapter shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares." (July 17, 1916, c. 245, § 16, 39 Stat. 374.)

"§ 64. **Individual liability of shareholders; transfer of shares.** The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; except that shareholders of any banking association now existing under State laws, having not less than $5,000,000 of capital actually paid in, and a surplus of 20 per centum on hand, both to be determined by the Comptroller of the Currency, shall be liable only to the amount invested in their shares; and such surplus of 20 per centum shall be kept undiminished, and be in addition to the surplus provided for in this chapter; and if at any time there is a deficiency in such surplus of 20 per centum, such association shall not pay any dividends to its shareholders until the deficiency is made good; and in case of such deficiency, the Comptroller of the Currency may compel the association to close its business and wind up its affairs under the provisions of this chapter relating to dissolution and receivership." (Dec. 23, 1913, c. 6, § 23, 38 Stat. 273.)

EARLY ACTS RELATING TO BANKS.

The following facts may be of interest, and are not without significance:

The Act of February 25, 1791, providing for the organization of the United States Bank, imposed no liability on stockholders. (1 U. S. Stats. at Large, p. 191.) Its charter expired in March, 1811.

In 1811 acts were passed which provided for the organization of certain banks—the Bank of Alexandria among others. These acts, or some of them, provided for liability of directors to creditors in certain cases. (2 U. S. Stats. at Large, p. 621 *et seq.*)

The Act of April 10, 1816, providing for the organization of the Bank of the United States contained a provision that directors should be liable in certain instances to creditors. (3 Stats. at Large, p. 266.) Its charter expired in March, 1836. The agrarian interests and the financial interests of the Nation clashed bitterly over whether its charter should be renewed.

The Act of February 25, 1863, laid the foundation of our present system of national banks. Section 29 of that Act provided for the appointment of receivers by the Comptroller. Section 12 imposed on stockholders a double liability to creditors. However, this Act, just like the Federal Farm Loan Act, contained no provision that receivers might enforce stockholders' liability. (12 U. S. Stats. at Large, p. 665.)

The entire banking system was revised by the Act of June 3, 1864. It contained the provision that is omitted

from the Federal Farm Loan Act, viz., that receivers appointed by the Comptroller

> "* * may if necessary to pay the debts of such association enforce the liability of the stockholders provided for by the twelfth section of this Act." (13 U. S. Stats. at Large, p. 99, § 50.)

NATIONAL AGRICULTURAL CREDIT CORPORATION ACT.

The above mentioned act is also illuminating. It provides for the organization of National Agriculture Credit Corporations. Section 1301 of 12 U. S. C. A. reads as follows:

> "Whenever any National Agricultural Credit Corporation shall be dissolved and its rights, privileges, and franchises declared forfeited as prescribed in the preceding section, or whenever any creditor of any such corporation shall have obtained a judgment against it in any court of record and made application accompanied by a certificate from the clerk of the court, stating that such judgment has been rendered and has remained unpaid for the space of thirty days or whenever the Comptroller of the Currency shall become satisfied of the insolvency of such corporation, he may, after due examination of its affairs in either case, appoint a receiver who shall proceed to wind up the affairs of such corporation. *The receiver so appointed shall exercise the powers and be subject to the restrictions of receivers of national banks; and the Comptroller of the Currency shall have the same powers and duties in connection with the administration of such receivership as he has in reference to the receivership of national banks.*" (Mar. 4, 1923, c. 252, Title II, § 215, 42 Stat. 1471.)

PROPOSED AMENDMENTS TO FEDERAL FARM LOAN ACT.

During the second session of the 69th Congress, Senator McLean introduced Senate Bill 4944 to amend the Federal Farm Loan Act. Thereafter, Senator Fletcher moved to amend the aforesaid bill. Section 40 of the amendment proposed by Senator Fletcher is as follows:

"(a) *The Federal Farm Loan Board may appoint a receiver who shall proceed to close up any joint-stock land bank and enforce the individual liability of the shareholders as provided by this act, in the following cases.*

First. Whenever any such bank shall fail to pay up its capital stock, and shall refuse to go into voluntary liquidation, as provided by this act, for three months after receiving notice of the assessment under section 39, from the Federal Farm Loan Board.

Second. Whenever any such bank fails to put up additional security when called upon to do so as provided by section 19 of this act.

Third. Whenever a creditor of any such bank shall have obtained a judgment against it in any court of record, and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days.

Fourth. Whenever the Federal Farm Loan Board after due examination of the affairs of any such bank, shall become satisfied of the insolvency of such bank, or that such bank has made loans which are not secured by first mortgages as provided by section 16 of this act.

(b) *Any receiver of a joint-stock land bank appointed under the provisions of this act shall have the same powers and duties and shall be subject to the same restrictions as a receiver appointed by the Comptroller of the Currency to wind up the affairs of a national banking association, and the Federal*

Farm Loan Board shall have the same power over the receivers of joint-stock land banks, as the Comptroller of the Currency has over the receivers of national banking associations.

(c) *Whenever any joint-stock land bank shall have been placed in the hands of a receiver under the provisions of this act, a shareholders' agent may be appointed to wind up the affairs of any such bank, in the same manner, under the same conditions, and with the same duties and powers as provided in the case of shareholders' agents appointed to wind up the affairs of national banking associations, so far as such provisions are applicable.*

(d) All expenses of any receivership shall be paid out of the assets of such bank before distribution of the proceeds thereof."

(Hearings before Committee on Banking and Currency, House of Representatives, second session, on H. R. 15540, a bill to amend the Federal Farm Loan Act, Part 2, No. 32361, United States Government Printing Office.)

During the hearings above mentioned there was placed in the record a letter from Honorable C. S. Dewey, Assistant Secretary of the Treasury, that summarized in parallel columns the provisions of Senate Bill 4944 (the McLean bill) and the provisions of the Fletcher amendment. This summary appears on p. 400 *et seq.* of Document No. 32361 above mentioned. We quote from the summary as follows:

"McLean Bill.

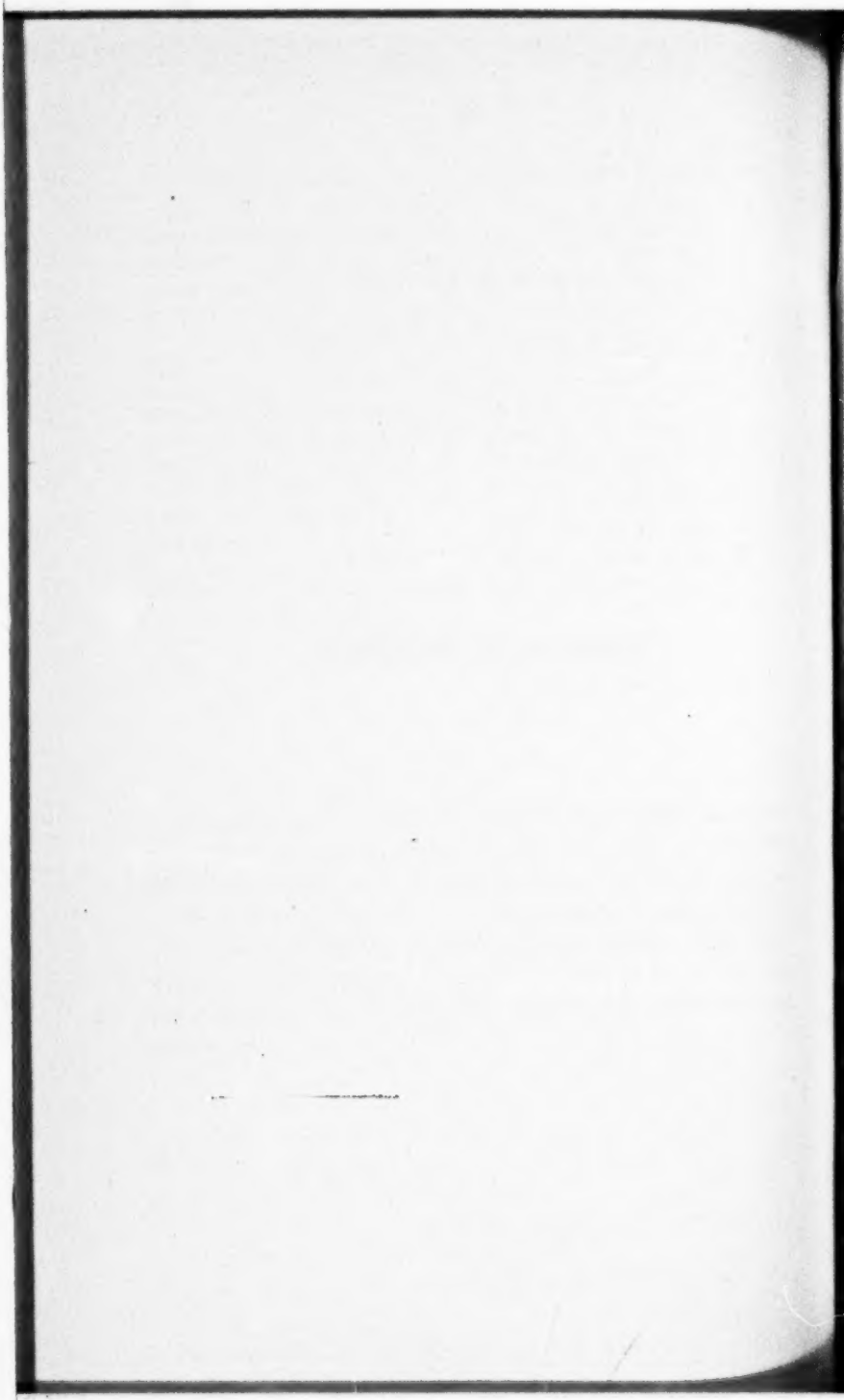
(Sec. 8, p. 12.) Secretary of Treasury to appoint receiver for any joint-stock land bank which fails to pay up its capital stock or refuses to go into voluntary liquidation after notice from Secretary; or whenever the Secretary is satisfied that a joint-stock land bank is insolvent or that such bank has made loans not secured by first mortgages. *Secretary to have same power over receivers of joint-stock land banks as Comptroller of Currency has over national bank receivers.*"

"Fletcher Amendment

(Sec. 8, p. 8.) Farm Loan Board to appoint receiver for any joint-stock land bank which fails to pay up its capital stock or refuses to go into voluntary liquidation after notice from Farm Loan Board; or whenever the Farm Loan Board is satisfied that a joint-stock land bank is insolvent or that such bank has made loans not secured by first mortgages. *Farm Loan Board to have same power over receivers of joint-stock land banks as Comptroller of Currency has over national bank receivers.*"

Both senators wished to grant power which the Congress had purposely withheld, viz., *the same power that the Comptroller of Currency has over national bank receivers, or the power to levy assessments on shareholders and enforce them by means of legal process.* The Congress again refused to grant the power to either the Secretary of the Treasury or the Federal Farm Loan Board.

SUMMARY OF ARGUMENT.



EXPLANATION.

One would suppose that after all the foregoing data we should at last be ready to discuss the Federal Farm Loan Act without further preliminaries. We are not, however, for the reason that more important things must first be settled.

The petitioner's case may be stated in two different ways. *First,* that the Federal Farm Loan Act does not authorize the Federal Farm Loan Board to empower receivers appointed by it to enforce shareholders' liability to creditors. *Second,* that the court below really *amended* the Federal Farm Loan Act while professing to interpret it.

Each statement presupposes or implicitly postulates not only certain rules of interpretation, but certain theories concerning legislative power, judicial power, and the function of interpretation. As Professor Adler says, postulates "are the source of reasons," and "should be admitted so that the ensuing process is reasoning from known grounds rather than the rationalization of a concealed bias or an implicit premise." (Dialectic, p. 126, International Library of Psychology, Philosophy and Scientific Method.)

Moreover, whenever a statute is involved the decisive factors are a court's assumptions concerning the legislative function, the judicial function, and the function of interpretation. To paraphrase Chesterton, the question is not whether these assumptions affect matters, but whether in the long run anything else affects them. All too often these vital assumptions are left vague and unformulated, and so, to do their work in the dark.

The drift of the Argument may be indicated as follows:

I.

A *statute* is involved. It certainly must be read, and possibly *interpreted.* The Circuit Court of Appeals really *amended* the statute, thereby exercising *legislative* power, contrary to the Constitution.

There is a distinction between legislative power and judicial power. *What is it?* . . . We evolve in a few paragraphs a rough, working-formula sufficient for the needs of this case, and then select the unshakeable rock upon which to erect the superstructure of our argument. (Pages 35-38, *infra.*)

II.

What *is* the function of interpretation?

The conclusion is, that under our form of government, and so far as an Act of Congress is concerned—

> *The function of interpretation is the discovery, in cases of uncertainty or doubt, of the intention that the Congress has effectively expressed in and by the said Act, or, in other words, the meaning of the Act.*

That is the doctrine of this Court. The doctrine is, that where an Act is plain there is no need of interpretation, and that the purpose of interpretation in cases of doubt is to discover the intention of the Congress.

The court below resorted to construction, despite the fact that the Act was so plain that construction had no office to perform. (Pages 39-40, *infra.*)

III.

The courts have enunciated certain so-called "rules of interpretation."

There is the "it would have been easy to say so" rule.

The rule, *expressio unius est exclusio alterius.*

These are not really rules of interpretation, but are the logical consequences of the division of powers made by the Constitution. (Pages 41-45, *infra.*)

IV.

Section 961 of 12 U. S. C. A. provides just what the Federal Farm Loan Board and its receivers may do in respect of insolvent joint-stock land banks.

It gives them power merely to convert into cash the *bank's* property and assets. Shareholders' liability to *creditors* is *not* a *corporate* asset.

Nowhere does the Act grant to the Board or its receivers the power to enforce shareholders' liability to creditors. Obviously, the power does not exist, for at least two reasons:

1. Not to grant is to prohibit, or *expressio unius est exclusio alterius.*

2. It would have been easy to say so, if the Congress had intended to grant the power.

The Act is plain, and the *litera legis* controls.

The National Bank Act, which was used as a guide by the framers of the Federal Farm Loan Act, and other acts conclusively show that the Congress purposely withheld the claimed power. (Pages 46-52, *infra.*)

V.

Section 831 (j) of 12 U. S. C. A. adds nothing to the powers of the Federal Farm Loan Board. It would have "such incidental powers" as were "necessary or requisite to fulfill its duties and carry out the purposes of this chapter" even in the absence of sub-section (j).

There is nothing in Section 831 that is even relevant to the question presented by this record.

As said by this Court:

> "Certainly an incidental power can avail neither to create powers which, expressly or by reasonable implication, are withheld, nor to enlarge powers given; but only to carry into effect those which are granted." (*First National Bank* v. *Missouri*, 263 U. S. 640, 659.)

Of course "the purposes" must find effective expression in the act.

In the entire Act there is no duty imposed upon, nor power granted to, the Federal Farm Loan Board to which the power to enforce shareholders' liability to creditors is necessary or requisite.

There is no logical defect in either the *litera legis* or the *sententia legis;* and the court below usurped legislative power when, professing to interpret, it *amended* the Act. (Pages 53-69, *infra.*)

VI.

Analysis of the Circuit Court of Appeals' opinion.

The court disregards the plain language of the Act, and resorts to construction when there is no need of it.

The opinion rests upon the demonstrably erroneous assumption that it is the purpose of the Act *to pay the debts* of insolvent banks *through the agency of the Board and its receivers.* The fact is, that it is the policy of the Act that the *assets* of insolvent banks shall be converted into cash by receivers acting under the direction of the Board, or courts of competent jurisdiction, and paid into the Treasury, subject to the order of the Board, *and that shareholders' liability to creditors, if any, shall be enforced only by creditors.*

The opinion also contains the following antinomy:

> It finds that the omission from the Federal Farm Loan Act of the clause
>
> > "and may, if necessary to pay the debts of such association, enforce the individual liability" of the stockholders,
>
> is not conclusive against the power of the receiver to maintain this action, and then bases the conclusion that the power exists upon cases arising under the National Bank Act—*or upon the very clause in question!* (Pages 70-85, *infra.*)

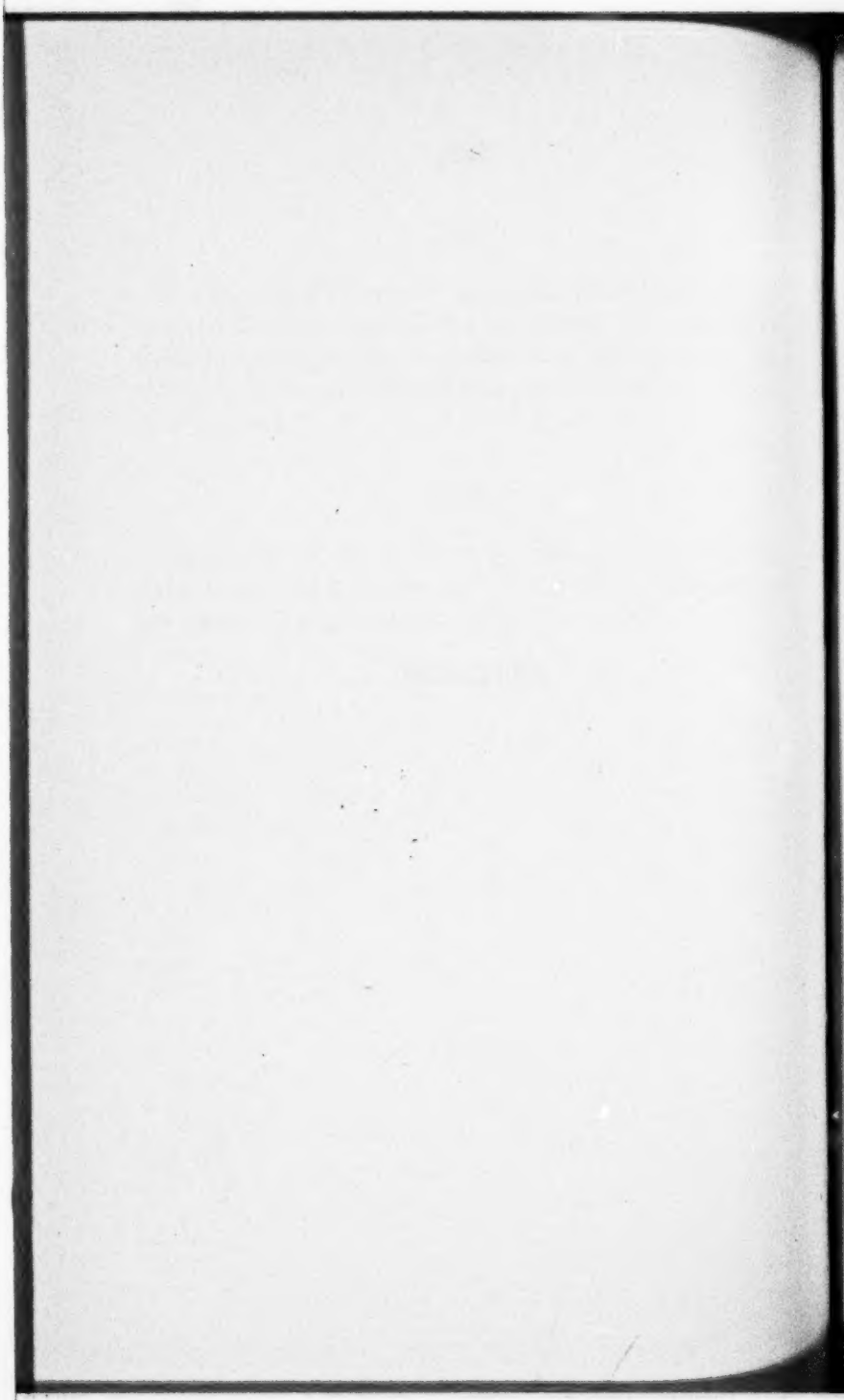
VII.

The radical differences between the National Bank Act and the Federal Farm Loan Act clearly prove that the Congress intended that the amount of shareholders' liability should be determined by a court of equity. (Pages 86-91, *infra.*)

VIII.

Section 37 of 12 U. S. C. A. has no application to Joint-Stock Land Banks, nor to the facts disclosed by the record. (Pages 92-100, *infra.*)

ARGUMENT.



I.

A working distinction between LEGISLATIVE power and JUDICIAL power suggested.

The ROCK upon which we build our case.

The result of the Circuit Court of Appeals' 'interpretation' of the Federal Farm Loan Act is all that even the most ardent advocate of "free judicial decision" could wish. Unquestionably the court *amended* the act, which nowhere provides that receivers appointed by the Board may enforce the liability of shareholders to creditors, or that the Board or any court may authorize them to do so.

While admitting that "a court may not read into a statute language or purposes not there found" (p. 470), and that "the right [to enforce shareholders' liability] was not given to the receiver as it was in the Banking Act" (p. 471), the Circuit Court of Appeals, nevertheless 'found' in the Federal Farm Loan Act the "right" in question. The supposed "right" is no part of the act. It was not placed there by the Congress. The conclusion is that the "right" found in the act had been previously hidden there by the Circuit Court of Appeals. And this brings up the distinction between legislative and judicial power. It is unnecessary to quote the articles of the Constitution that grant legislative powers to the Congress and judicial power to the courts.

What *is* legislative power? Wherein does it differ from *judicial* power? These are questions more readily asked than answered. Perhaps a few statements taken from this Court's opinions may suggest a rough, working formula sufficient for the needs of this case.

In

The Minnesota Rate Cases, 230 U. S. 352, 433, 57 L. ed. 1511, 33 S. Ct. 729,

the Court said:

> "It is the function of this court to interpret and apply the law already enacted, but not under the guise of construction to provide a more comprehensive scheme of regulation than Congress has decided upon."

And in

Carey v. *Donohue,* 240 U. S. 430, 437, 36 L. ed. 386:

> "* * * we are not at liberty to supply by construction what Congress has clearly shown its intention to omit."

And in

United States v. *First National Bank,* 234 U. S. 245, 260:

> "If the true construction has been followed with harsh consequences, it cannot influence the courts in administering the law. *The responsibility for the justice and wisdom of legislation rests with the Congress, and it is the province of the courts to enforce, not to make, the laws."* (Citing cases.)

Courts, as a rule, do not act *sua sponte.* Some one must invoke them. And in order to get them to act the plaintiff must show that the defendant has been guilty of a breach of duty. (Kocourek's Jural Relations, p. 350.) For instance, it is claimed in this case that petitioner was guilty of a breach of duty in refusing to pay to the receiver the alleged amount of his (petitioner's) liability to creditors.

What, then, is the distinction between *legislative* power and *judicial* power?

Roughly, legislative power (under our form of government) is the capability to make legal rules, whereas judicial power is the legal capability to impose sanctions for breach of duty in concrete cases.

The making of legal rules is almost the sole function of American legislatures, and certainly the chief business of our courts is the settlement of controversies. While courts always have made legal rules, and probably always will, the *necessity* of their now doing so has largely been relieved by the existence of free legislative bodies, which meet at frequent intervals. Their *power* to make legal rules has also been greatly curtailed, not only by precedent, custom, and public opinion, but by constitutional provisions. Their proper activities in this respect have been aptly characterized as *interstitial*. And "the lines within which movement is permitted and beyond which there is to be no travelling" have been pretty plainly chalked. In short, under our form of government legal rules are legislative *staples* and judicial *by-products*. In the settlement of controversies, which is their main business, the courts cannot make legal rules for a case in hand if the legislature has already done so. They cannot *substantially* add to or subtract from a constitutional legislative act. (See authorities, pp. 44-5 *infra*.)

Upon this rock, then, we build our case: In order to determine whether petitioner was guilty of a breach of duty in refusing to pay to respondent the alleged amount of his (petitioner's) liability to creditors of Bankers Joint Stock Land Bank of Milwaukee, we must first determine whether the Congress has ordained that the Federal Farm Loan Board may empower its receivers to enforce

shareholders' liability to creditors. If it has not, then no court can *rightfully* do so. It may have the *power* wrongfully and in defiance of the Constitution to do so, but not the right. And the same thing is true if the Congress has ordained that creditors may, and that the Board may not, enforce shareholders' liability to creditors. Even Duguit will agree to this. (Duguit, *Traité de Droit Constitutionnel,* 2e edit., vol. 2, pp. 91-2.) And this brings us to the function of interpretation.

II.

Under our form of government, and so far as an Act of of Congress is concerned—

> **The function of interpretation is the discovery, in cases of uncertainty or doubt, of the intention that the Congress has effectively expressed in and by the said Act or, in other words, the meaning of the Act.**

The cases set forth in the margin conclusively demonstrate that this is the firmly-established doctrine of this Court.[5]

As will hereafter appear, the Federal Farm Loan Act is so plain that even he who runs may read its meaning, or the intention of the Congress. The necessity for con-

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5. United States v. Crosley, 196 U. S. 327, 333, 25 S. Ct. 261, 49 L. ed. 497:

> "For while we may not add to or take away from the terms of a statute, the main purpose of construction is to give effect to the legislative intent as expressed in the act under consideration."

Jones v. Guaranty, etc., Co., 101 U. S. 622, 626, 25 L. ed. 1030:

> "The intent of the law-maker is the law."

Louisville and Nashville Railroad Co. v. Mottley, 219 U. S. 467, 474, 55 L. ed. 297, 31 S. Ct. 265:

> "Our duty is to ascertain the intention of Congress in passing the statute upon which the railroad company relies as prohibitive of the further enforcement of the agreement in suit."

Thompson v. Thompson, 218 U. S. 611, 619, 31 S. Ct. 117, 54 L. ed. 1180:

> "We do not think it was the intention of Congress * * * to revolutionize the law governing the rela-

struction does not exist; and the lower court's attempt to construe an act that needed, not construction, but only enforcement, resulted in auto-obfuscation, and an unconstitutional exercise of legislative power.

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tion of husband and wife as between themselves. We think the construction we have given the statute is in harmony with its language and is the only one consistent with its purpose."

United States v. Mescall, 215 U. S. 26, 32, 30 S. Ct. 19, 54 L. ed. 77:

"His act comes within the letter of the statute as well as within its purpose, and the intent of Congress in the legislation is the ultimate matter to be determined."

Burton v. United States, 202 U. S. 344, 26 S. Ct. 688, 50 L. ed. 1057:

"There is, in our judgment, no escape from this interpretation consistently with the established rule that the intention of the legislature must govern in the interpretation of a statute. 'It is the legislature, not the court, which is to define a crime, and ordain its punishment.'" (Citing cases.)

Indianapolis and St. Louis R. R. Co. v. Horst, 93 U. S. 291, 300, 27 L. ed. 885:

"Here, the question is one of legislative intent. The intention of the law-maker constitutes the law * * *"

Raymond v. Thomas, 91 U. S. 715, 23 L. ed. 434:

"The meaning of the legislature constitutes the law."

United States v. Fisher, 109 U. S. 145, 3 S. Ct. 154, 27 L. ed. 885:

"Certain well-settled rules of interpretation are applicable to this case. One is that a legislative act is to be interpreted according to the intention of the legislation apparent on its face, Wilkinson v. Leland, 2 Pet. 627;"

III.

The conclusion reached by the Circuit Court of Appeals violates the "it would have been easy to say so" rule, the rule expressio unius est exclusio alterius, and other rules enunciated by this Court.

The rules upon which we rely and wish to recall to the mind of the Court are as follows:

> "We do not think it a reasonable construction of the statute to say that the vast mass of postal matter know as 'letters' was intended by Congress to be expressed in a term so general and vague as the word 'writing', *when it would have been just as easy, and also in strict accordance with all its other postal laws and regulations, to say 'letters' when letters were meant.*"
>
> *U. S.* v. *Chase*, 135 U. S. 255, 259, 10 S. Ct. 756, 34 L. ed. 117.

> "We have no doubt it was the wish of those who procured the passage of the special statute under which the Court of Claims took jurisdiction of this suit, to obtain from Congress authority for that court, to give a judgment against the United States at least for interest in case it should be found that payments on the contracts held by the claimants had been reasonably delayed. *But if Congress had desired to grant such authority, it would have been easy to have said so in express terms; and because it did not say so, we are led irresistibly to the conclusion that it did not intend to give any such power.*"
>
> *Tillson* v. *U. S.*, 100 U. S. 43, 46, 25 L. ed. 543.

A few of the great many other cases applying the "it would have been easy to say so" rule, are:

Vicksburg, etc. R. Co. v. *Dennis,* 116 U. S. 665, 669, 6 S. Ct. 625, 29 L. ed. 770.

Baltimore, etc. R. Co. v. *Grant,* 98 U. S. 398, 403, 25 L. ed. 231.

United States v. *First Nat. Bank,* 234 U. S. 245, 262, 34 S. Ct. 846, 58 L. ed. 1298.

Shaw v. *Railroad Co.,* 101 U. S. 557, 565, 25 L. ed. 892.

> *"If these were intended, surely the statute would have said something more, etc."*

Austin v. *U. S.,* 155 U. S. 416, 433, 15 S. Ct. 167, 39 L. ed. 206.

> *"If such had been the intention of Congress, no reason suggests itself why Congress should not have unequivocally said so;"*

And then there is the rule—*expressio unius est exclusio alterius.*

Acts of Congress conferring appellate jurisdiction on the Supreme Court operate as a negation or exception of this jurisdiction in other cases.

Durousseau v. *U. S.,* 6 Cranch, 307, 314, 3 L. ed. 234, 2 Cond. Rep. 380, 382.

National Exchange Bank v. *Peters,* 144 U. S. 573, 12 S. Ct. 767, 36 L. ed. 546.

See also:

Wells v. *Pontotoc County,* 102 U. S. 625, 632, 26 L. ed. 122.

Case v. *Kelly,* 133 U. S. 21, 26, 10 S. Ct. 216, 33 L. ed. 515.

Lastly, the true rule is that statutes are to be construed as they were intended to be construed at the time they were written:

Schuyler County v. *Thomas*, 98 U. S. 169, 172, 25 L. ed. 88.

> *"The after wisdom obtained by unfortunate results, cannot justly be applied in their interpretation."*

United States v. *Union Pacific Railroad Co.*, 91 U. S. 72, 81.

Woodward v. *DeGraffenreid*, 238 U. S. 284, 293, 35 S. Ct. 764, 59 L. ed. 1310.

Louisville & N. R. R. Co. v. *Mottley*, 219 U. S. 467, 474, 31 S. Ct. 265, 55 L. ed. 297.

Platt v. *Union Pac. R. Co.*, 99 U. S. 48, 64, 25 L. ed. 424.

U. S. v. *First Nat. Bank*, 234 U. S. 245, 260, 34 S. Ct. 846, 58 L. ed. 1298.

The foregoing rules are commonly called *rules of construction, or interpretation.* This is due to faulty analysis, since interpretation is merely a conscious effort to resolve *doubts* that arise as to the meaning of a statute or other legal document, etc. As said by this Court, "the province of construction lies wholly within the domain of ambiguity."

Hamilton v. *Rathbone*, 175 U. S. 414, 421, 20 S. Ct. 155, 44 L. ed. 219.

U. S. v. *Lexington Mill Co.*, 232 U. S. 399, 409-10, 34 S. Ct. 337, 58 L. ed. 658.

Lake County v. *Rollins*, 130 U. S. 662, 670, 9 S. Ct. 651, 32 L. ed. 1060.

If the foregoing rules were true rules of construction they would aid us in arriving at the meaning of the Act,

or the intention of the Congress, which, obviously, they do not. In reality, these so-called rules of construction are "theorems, whose function is the analysis of subordinate implications of the postulates [Point I]." (Adler, op. cit. pp. 153-4.) In other words they are merely the *logical consequences* of the distinction between legislative power and judicial power. They necessarily follow from, and are implied, and demonstrable by, the aforesaid distinction. The same thing is true of the following so-called "rules of construction."

> "And it is the intention expressed in the statute, and that alone, to which the courts may lawfully give effect. *They may not assume or presume purposes and intentions that the terms of the law do not indicate, and then enact and expunge provisions to carry out those supposed intentions.*"
>
> *Wabash R. Co.* v. *U. S.* (C. C. A.) 178 Fed. 5, 12.
>
> *U. S.* v. *Colorado, etc. R. Co.* (C. C. A.) 157 Fed. 321.
>
> *U. S.* v. *Ninety-nine Diamonds,* (C. C. A) 139 Fed. 961, 964.

> *"No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute."*
>
> *U. S.* v. *Goldenberg,* 168 U. S. 95, 103, 18 S. Ct. 3, 42 L. ed. 394.

> *"It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases because no good reason can be assigned why they were excluded from its provisions."*
>
> *Dunn* v. *Reid,* 10 Pet. 526, 527, 9 L. ed. 519.
>
> *Bate Refrigerating Co.* v. *Sulzberger,* 157 U. S. 1, 36, 16 S. Ct. 508, 39 L. ed. 601.
>
> *Merritt* v. *Welsh,* 104 U. S. 694, 704, 26 L. ed. 896.

"Of course it is familiar learning that a word may be interpolated or suppressed if it be necessary to make the language harmonize with the obvious intent of the lawmaker. *But I know of no rule of construction which permits us to beg the intent, and then to interpolate or suppress a word to carry out such intent. Rather it is to be presumed that the very language was used which expresses the intent.*"

Northern Pac. R. Co. v. *U. S.*, 36 Fed. 282, 287, Brewer, J.

Now, in the light of the foregoing, let us direct our attention to the Federal Farm Loan Act.

IV.

Section 961 of 12 U. S. C. A. provides just what the Federal Farm Loan Board and its receivers may do in respect of insolvent joint-stock land banks. It gives them power merely to convert into cash the BANK'S property and assets.

Shareholders' liability to creditors is not a CORPORATE asset.

Nowhere does the Act grant to the Board or its receivers the power to enforce shareholders' liability to creditors.

The Act is plain, and the litera legis controls.

Section 961 of 12 U. S. C. A. (p. 16 *supra*) provides for the appointment of receivers and defines not only their powers and duties but the powers of the Federal Farm Loan Board and of courts of competent jurisdiction to direct receivers in the liquidation of insolvent joint-stock land banks.

The Court will observe that the section nowhere provides, either that receivers appointed by the Federal Farm Loan Board may enforce shareholders' liability to creditors, or that the said Board or any court may authorize them to do so. Clearly, this calls for the application of the "it would have been easy to say so" rule (pp. 41-42, *supra*).

The Court will also observe that the powers not only of receivers, but of the Federal Farm Loan Board, are limited solely to the property and assets of *insolvent banks*. They do not extend to the property or as-

sets of third persons. Of course, the liability imposed on shareholders "for all contracts, debts, and engagements" of a joint-stock land bank (§ 812, p. 18, *supra*), is not a *corporate* asset. It is the property of creditors. And the books are full of cases holding that neither the corporation, nor its receiver, even though directed to do so by the court appointing him, can enforce shareholders' liability to creditors in the absence of express statutory authority:

> "Since the liability is not an asset of the corporation unless made so by the statute, it does not pass under an assignment by the corporation for the benefit of creditors, so as to entitle the assignee to enforce it, nor, in the absence of provision to such effect, can the liability be enforced by an assignee in insolvency, or a trustee in bankruptcy, of the corporation, by an agent appointed by the stockholders to wind up the affairs of the corporation, or by a receiver appointed by a court of equity, whether appointed at the suit of a stockholder or at the suit of a creditor, and whether he is a general receiver invested with 'all the estate, property, and equitable interests' of the corporation, or a special receiver appointed for the purpose. 'Neither a receiver, nor an assignee in bankruptcy, nor an assignee under a voluntary general assignment for the benefit of creditors, each of whom represents creditors as well as the insolvent, acquires any right to enforce a collateral obligation given to a creditor, or to a body of creditors, by a third person, for the payment of the debts of the insolvent.'

Of course, special statutory provisions may change this rule. Statutes making stockholders individually liable for corporate debts may in express terms provide for the enforcement of the liability by a receiver of the corporation; and it may be enforced by a receiver, assignee for creditors or trustee in bankruptcy when it is placed on the same footing as unpaid subscriptions by being expressly or impliedly made or declared a part of the assets

of the corporation, to be collected for the benefit of all the creditors ratably.

In some states provision is made for the enforcement of the individual liability of stockholders in banks by the commissioner or superintendent of banks in behalf of creditors.

Whether or not the liability is personal to the creditors so that they alone may sue, or is an asset of the corporation so that it may be enforced by the corporation's trustee in bankruptcy, is to be determined by the law of the state where the corporation was organized, and the federal courts will therefore follow the decisions of the courts of that state in determining it. The fact that the corporation was authorized to do business in the state where the action is brought does not affect the question, or give the trustee a right to sue there where the statutes of the state where the corporation was organized give that right exclusively to creditors." (7 Fletcher Cyc. of Corp. § 4214, p. 7341.)

And in

6 *Thompson on Corp.* (3d ed.) § 4811 (original § 4801)

it is said:

"A principle applicable perhaps to all liability of stockholders imposed by statute is that such liability is not ordinarily to the corporation and can not be enforced by it in any form of action, or on the theory that it is a trustee for its creditors. It is not a part of the assets of the corporation and it has no right to or interest in the liability. It has been laid down that this liability runs directly from the stockholders to the creditors of the corporation. For these reasons it can not be assigned by the corporation to a trustee for the benefit of creditors. Neither can the corporation enforce this liability against the stockholders by assessment. And in the absence of statutory provisions it is generally held that a receiver of the corporation can not enforce this statutory liability. Under the statute of Utah

it has been held that an action to enforce the individual liability of stockholders to creditors must be brought by the creditors, and not by the corporation or its receiver. A few courts have denied the doctrine that the statutory liability is not a corporate asset."

See the following typical cases:

Zang v. *Wyant,* 25 Colo. 551, 56 Pac. 565.

Seegmiller v. *Day,* 249 Fed. 177.

Minnesota Baseball Co. v. *City Bank,* 66 Minn. 441, 69 N. W. 331.

Apparently, Washington and Pennsylvania, and perhaps one or two others, are the only states that have denied the doctrine that this statutory liability is not a corporate asset.

Not only the "it would have been easy to say so" rule, but the rule *expressio unius est exclusio alterius* applies here.

The grant of specific powers only is in effect a denial of others. A prohibition is implied from the failure to grant them. *First National Bank* v. *National Exchange Bank,* 92 U. S. 122, 128; *California Bank* v. *Kennedy,* 167 U. S. 362, 367. See also cases cited on p. 42 *supra,* and pp. 61-62 *infra.*) This rule is particularly applicable here. The Congress provided that shareholders should be liable "for all contracts, debts and engagements" of a joint-stock land bank, to a specified amount. It thereby gave persons having claims against a joint-stock land bank the right to enforce them against shareholders. The Congress could have provided that receivers when authorized by the Federal Farm Loan Board should prosecute these claims, but it did not do

so. It doubly failed to do so. First, by the failure to take away from creditors the right theretofore granted to them, and secondly, by specifying what receivers might do under the direction and control of the Board. After granting to creditors the right to enforce claims against shareholders, an express provision, unmistakable in its terms, was necessary to vest that right in either the Board or the receivers appointed by it. No mere inference would do, for all the inferences are clearly the other way. As Mr. Justice Sutherland pertinently said in an analogous case:

> "* * * the reasons adduced against the existence of the power substantively are conclusive against its existence incidentally; for it is wholly illogical to say that a power which by a fair construction of the statutes is found to be denied nevertheless exists as an incidental power. Certainly an incidental power can neither avail to create powers which expressly or by reasonable implication, are withheld, nor to enlarge powers given; but only to carry into effect those which are granted." (*First National Bank* v. *Missouri*, 263 U. S. 640, 659.)

In

In re *German Savings & Loan Assn.* (C. C. A. 7th Cir.) 253 Fed. 722, 723,

the Court, through Baker, C. J., said:

> "If a corporation is to be treated as having a natural person's freedom of action in all directions except those prohibited, it would be senseless for a Legislature to enumerate granted powers; it would be necessary only to list prohibitions. But the fundamental principle is the converse. A corporation has only the powers that are expressly named and such others as are necessary to the exercise of the named powers. Silence is prohibition. For if a particular power is necessary to the exercise of a named power, it by that necessity becomes itself a named power."

That these vital matters did not escape the attention of the Congress is certain. The legislation recommended by the United States Commission, of which Senator Fletcher was Chairman, imposed double liability to creditors on shareholders, and provided that banks should be liquidated in accordance with rules to be devised by the commissioner (p. 13, *supra*). The act finally passed does not leave these matters to the discretion of the Federal Farm Loan Board. It expressly provides what may be done. It follows, therefore, that the power of receivers to enforce the liability of shareholders to creditors does not exist, and that it cannot be conferred upon them by the said Board.

Further proof that a deliberate policy was adopted by the Congress in respect of this matter is that The National Bank Act was used as a guide (pp. 13, 16-8, *supra*); that in defining the power of the receivers and the Federal Farm Loan Board, the Congress scrupulously followed The National Bank Act down to the provision

> "and may if necessary to pay the debts of such association, enforce the individual liability of the stockholders"

when there was a significant stop.

Then there are the proposed amendments to the Federal Farm Loan Act that were moved during the second session of the 69th Congress (pp. 22-24, *supra*). The Congress, however, refused to grant to the Federal Farm Loan Board or its receivers the power to enforce shareholders' liability to creditors—a power that had been expressly granted to the Comptroller of the Currency and his receivers in respect of insolvent national banks. To say that the Congress did not deliberately withhold this power from

the Federal Farm Loan Board is to disregard undisputed facts. It is also to disregard *legislative practice*, which is evidenced by the fact that the Congress has incorporated express provisions of a like character in Acts both before and since the passage of the Federal Farm Loan Act. (Pages 20-21, *supra.*)

There is a passage in Salmond's excellent Jurisprudence that is applicable here. Referring to the distinction that Continental lawyers make between *grammatical* and *logical* interpretation, he says that the former

> "is that which regards exclusively the verbal expression of the law. It does not look beyond the *litera legis.* * * * in all ordinary cases the courts must be content to accept the *litera legis* as the exclusive and conclusive evidence of the *sententia legis.* They must in general take it absolutely for granted that the legislature has said what it meant, and meant what it has said. *Ita scriptum est* is the first principle of interpretation. Judges are not at liberty to add or take from or modify the letter of the law, simply because they have reason to believe that the true *sententia legis* is not completely expressed by it. That is to say, in all ordinary cases grammatical interpretation is the sole form allowable." (Jurisprudence, 6th ed. pp. 137-8.)

This, too, is not a true rule of interpretation (pp. 43-44, *supra.*) Where an act is plain there is no occasion to interpret it. Interpretation, like thought, is purely *instrumental.* It is resorted to only in cases of obstruction, difficulty, doubt. When a mere *reading* of an act enables us to state its meaning there is no *interpretation* in the proper, technical sense.

The excerpt from Salmond is, however, a good statement of the limitation under which courts labor, by reason of the fundamental distinction between legislative and judicial power.

V.

Section 831 (j) of 12 U. S. C. A. adds nothing to the powers of the Federal Farm Loan Board. It would have "such incidental powers" as were "necessary or requisite to fulfil its duties and carry out the purposes" of the Act, even in the absence of subsection (j).

As held by this Court—

> **"* * * an incidental power can avail neither to create powers which expressly or by reasonable implication are withheld, nor to enlarge powers given; but only to carry into effect those which are granted."**

In the entire Act there is no duty imposed upon, nor power granted to, the Federal Farm Loan Board to which the power to enforce shareholders' liability to creditors is necessary or requisite.

There is no logical defect in either the litera legis or the sententia legis; and the court below usurped legislative power when, professing to interpret, it amended the Act.

We now ask the Court to consider section 831 of 12 U. S. C. A. (Appendix, pp. 103-4, *infra.*) The Court will observe that this section deals almost exclusively with the administrative and visitorial powers of the Federal Farm Loan Board. Aside from subsection (a), which is irrelevant to this controversy, and subsection (j), which will presently be noticed, the section treats principally of the power of the Board to regulate and supervise, in the conduct of their business, the banks and associations organized under the Act.

There is nothing in the entire section that has the slightest relevancy to this controversy except subsection (j), which is that the Federal Farm Loan Board may

> "exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this chapter."

This section adds nothing to the powers of the Board. It would be most unreasonable, indeed, to impose duties and at the same time to withhold "such incidental powers" as were necessary or requisite to perform them. Agents, servants, bailees, trustees, public officers, etc., have these incidental powers as a matter of course. Corporations—public, private, and municipal—also have in addition to their express powers, those incidental powers that are necessary to their existence or to the exercise of powers expressly granted. The Board would have "such incidental powers," even in the absence of subsection (j).

Now what is an incidental power?—disregarding for the moment the definition given in the subsection itself. In

> *First National Bank* v. *Missouri*, 263 U. S. 640, 659,

this Court said:

> "Certainly an incidental power can avail neither to create powers which, expressly or by reasonable implication, are withheld *nor to enlarge powers given; but only to carry into effect those which are granted.*"

This pragmatic definition might be put into more words, or elaborated, and illustrated, all of which would add practically nothing to our knowledge concerning the

essential nature of an incidental power. We set forth in the margin a few cases where the principles above stated have been applied to municipal[5] and private corporations.[6]

The incidental powers mentioned in subsection (j)—"such as shall be necessary or requisite to fulfill its duties and carry out the purposes of this chapter"—are merely the incidental powers that the Board would have as a matter of law in the absence of the subsection in question.

"PURPOSES" OF THE ACT AND THEIR RELATION TO POWERS OF THE BOARD.

It is needless to state that the duties of the Board mentioned in Section 831 (j) are the duties of the Board created or imposed by the Federal Farm Loan Act, which constitutes Chapter 7 of Title 12 of the United States Code. In other words, the *Act* is the only source of their duties. And the same thing is true in respect of "the purposes of this chapter." *These purposes must be effectively expressed in the Act proper.* They must be found in either (a) the provisions regarding the organization, powers and duties of the banks and associations mentioned in said Act, or (b) the provisions relating to the creation, powers and duties of the Board. We say this for the reason that the Circuit Court of Ap-

5. Arms v. City of Chicago, 314 Ill. 316, 145 N. E. 407.
Potson v. City of Chicago, 304 Ill. 222, 136 N. E. 594.
People ex rel. City of Olean v. Western New York & Pennsylvania Traction Co., 214 N. Y. 526, 108 N. E. 847.
Thorp v. Blake, (Tex.) 171 S. W. 549.

6. In re German Savings & Loan Ass'n., (C. C. A. 7th Cir.) 253 Fed. 722.

peals seems to have thought that the "purposes" of the Act had some mysterious and potent quality of spontaneous generation of powers that could not be assigned to any particular collocation of words.

Let us consider for a moment the purposes of the Act and their relation to the powers of the Board. A numerous body of our citizens, upon whom the rest of us depend for food, were in dire straits. The Government devised the Federal Farm Loan Act for the main purpose of relieving agrarian distress. At the same time it created agencies which could be used by the United States in their fiscal affairs. Contemporary economic and political history, to say nothing of history of the Act and the debates in Congress, confirm this view of the Act.

The same conclusion is reached if we look solely to the Act itself. We see at a glance that its purpose—its main purpose—was to extend aid to farmers. This purpose finds expression not only in the title of the act, but in almost every part of the act proper. *The purpose of the Act, then, was to extend Government aid to farmers;* and yet, the Federal Farm Loan Board cannot, for that reason, conduct courses in agronomy, or support the price of wheat on the Chicago Board of Trade, or fix the wages of farm labor, or distribute radios to farmers to relieve the monotony of long winter evenings.

The Circuit Court of Appeals also referred to the title of the Act.[6] It furnishes no support to the conclusions reached by the court below, even if

6. "To provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

we ignore the repeated decisions of this Court that "the title of an Act furnishes little aid in the construction of its provisions," and that it "has little weight" even when the meaning of the act proper is doubtful.[7]

No one would contend that by virtue of the title of the Act, the Federal Farm Loan Board could fix the rate of interest to be charged by persons or corporations (not organized under the Act) engaged in making farm loans, or compel the mail-order houses to extend credit to farmers, or fix a tariff on imports of farm products. Why? Simply because the *Act itself, regardless of its purposes, must be looked to in order to ascertain the powers granted by the Congress to the aforesaid Board.*

"The spirit of the act," said Mr. Justice Story, "must be extracted from the words of the act, and not from conjectures *aliunde.*" (*Gardner* v. *Collins*, 2 Pet. 58, 92, 7 L. ed. 347.)

> "Where the language of the act is clear, there is great danger in departing from the words used, to give effect to the law which may be supposed to have been designed by the legislature." (*Dunn* v. *Reid*, 10 Pet. 524, 526, 9 L. ed. 519.)

> "Where the will of the legislature is clearly expressed, it ought to be followed without regard to consequences, and a construction, derived from a

7. Haddon v. Collector, 5 Wall. 107, 110, 18 L. ed. 518.
U. S. v. Union Pacific Railroad Co., 91 U. S. 72, 82, 23 L. ed. 224.
Goodlett v. Louisville, etc., R. Co., 122 U. S. 391, 408, 7 S. Ct. 1254, 30 L. ed. 1230.
Patterson v. The Eudora, 190 U. S. 169, 172, 23 S. Ct. 821, 47 L. ed. 1002.
Cornell v. Coyne, 192 U. S. 418, 430, 24 S. Ct. 383, 48 L. ed. 504.

consideration of its reason and spirit, should never be resorted to, but where the expressions are so ambiguous as to render such mode of interpretation unavoidable." (*Denn* v. *Harnden*, 1 Paine 61, 9 Fed. Cas. No. 4,819.)

"Nothing is better settled than that in the construction of a law its meaning must first be sought *in the language employed*. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it. *Lake County* v. *Rollins*, 130 U. S. 662, 670, 671; *Bate Refrigerating Co.* v. *Sulzberger*, 157 U. S. 1, 33; *United States* v. *Bank*, 234 U. S. 245, 258; *Caminetti* v. *United States*, 242 U. S. 470, 485." (*United States* v. *Standard Brewery*, 251 U. S. 210, 217, 64 L. ed. 229, 40 S. Ct. 139.)

In the case just cited the *Act* itself expressly declared its purposes, and then effectuated those purposes by means of specific provisions. See also

White v. *United States*, 191 U. S. 545, 551-2, 24 S. Ct. 171, 48 L. ed. 295.

Even if the title of the Act contained a statement that one of its purposes was to empower the Federal Farm Loan Board to enforce shareholders' liability to creditors of banks and associations organized thereunder, the question would immediately arise whether the purpose had been consummated by means of effective provisions to that end. Mere will, wish, purpose, intention, amounts to nothing. To return to the matter of

INCIDENTAL POWERS.

The question to be determined may be stated thus:

DOES THE ACT GRANT ANY POWER TO OR IMPOSE ANY DUTY ON THE FEDERAL FARM LOAN BOARD THAT CANNOT BE CARRIED INTO EFFECT OR PERFORMED UNLESS THE BOARD ALSO HAS THE POWER TO ENFORCE THROUGH ITS RECEIVERS THE LIABILITY OF SHAREHOLDERS TO CREDITORS?

If there is any power or duty of this kind it should be formulated in words, and not rest in some supposed general purpose. *The Board is purely a creature of statute, deriving both its existence and powers therefrom,* just as municipal corporations do; and the incidental powers "must be necessary, not merely convenient, and the intention of the Legislature must be free from doubt. Dillon on Municipal Corporations (3d Ed.) Sec. 89; *Minturn* v. *Larne,* 23 How. 435, 16 L. Ed. 574; *City of Ottowa* v. *Carey,* 108 U. S. 110, 124, 2 Sup. Ct. 361, 27 L. Ed. 669". (*People ex rel. City of Olean* v. *Western New York & Pennsylvania Traction Co.,* 214 526, 108 N. E. 847, 848). See also the cases cited on p. 55, *supra.*

There is no power granted in Sec. 831, (Appendix, p. 103, *infra*), that cannot be carried into effect unless the Board also has the power to enforce through its receivers the liability of shareholders to creditors. It could exercise every power granted and perform every duty imposed by the entire act *even if the liability to shareholders did not exist.*

And the same thing is true so far as Sec. 961, (p. 16, *supra*), is concerned. In most states there is no stockholders' liability to creditors of ordinary corporations.

And yet when these corporations become insolvent receivers appointed by the courts take possession of the corporate books, property and assets, and, under the control of the courts, collect all debts, dues, and claims belonging to the corporations, sell or compound bad or doubtful debts, dispose of real and personal property, and distribute the proceeds among persons holding claims against the *insolvents*. Moreover, as we have heretofore seen (pp. 47-49, *supra*) many states impose a double liability to creditors upon stockholders of banking associations and other corporations of like character. Yet when these associations become insolvent complete liquidation of their assets is accomplished by receivers, despite the fact that not even courts of equity can empower them to enforce stockholders' liability to creditors.

The entire Act may be examined section by section, and line by line, without the discovery of even one duty or power to which the power of the Board or its receivers to enforce shareholders' liability is necessary or requisite.

This is not surprising, because:

1. The creation of shareholders' liability to creditors without more, necessarily left the right to enforce the said liability in *creditors*.

Formerly the National Bank Act made no express provision for the enforcement of stockholders' liability to creditors in cases of *voluntary* liquidation. In

Richmond v. *Irons*, 121 U. S. 27, 48,

this Court said:

> *"It can hardly be supposed that the omission in the statute to provide an express and specific course of proceeding, by way of judicial remedy, in case of*

voluntary liquidation, left the creditors of such association in such circumstances without remedy against either a deficiency of assets or the results of a fraudulent maladministration. Section 5151 imposes upon the shareholders of every national banking association an individual responsibility for all its contracts, debts, and engagements, and the terms in which the obligation is created are unconditional and unqualified, except that the liability shall be equal and ratable as among the shareholders.

As all the shareholders are bound in that way to all the creditors, any proceeding to enforce this liability must be such as from its nature would enable the court to ascertain for what the stockholders ought to be made liable, to whom, and in what proportion as respects each other. This can only be done by the methods and machinery of a court of equity."

See also:

Coleman v. *White*, 14 Wis. 700.

Where this liability is enforced by creditors in a court of equity, shareholders can be heard on the important question of the amount of their liability, if any, and in close proximity to where they live. These considerations doubtless moved the Congress to depart from the National Bank Act in the particulars heretofore mentioned when the Federal Farm Loan Act was devised.

2. The Board's powers in respect of the liquidation of insolvent banks and associations, as well as the powers of receivers, were specifically enumerated and defined (pp. 46-52, *supra*). The power to enforce shareholders' liability to creditors was not granted either to the Board, or to the receivers appointed by it; consequently the power was prohibited.

Walla Walla v. *Walla Walla Water Power Co.*, 172 U. S. 1, 22, 19 S. Ct. 77, 43 L. ed. 350.

Case v. *Kelly*, 133 U. S. 21, 26, 10 S. Ct. 216, 33 L. ed. 515.

Sturges v. *Collector,* 12 Wall. 19, 27, 20 L. ed. 257.

United States v. *Arredondo,* 6 Pet. 691, 725, 8 L. ed. 560.

Arthur v. *Cumming,* 91 U. S. 362, 364, 23 L. ed. 439.

In re Johnson, 224 Fed. 180.

Ladew v. *Tennessee Copper Co.,* 179 Fed. 245, 250.

Washington Home for Incurables v. *American Security, etc., Co.,* 224 U. S. 486, 32 S. Ct., 554, 56 L. ed. 854.

Durrousseau v. *United States,* 6 Cranch 307, 314, 3 L. ed. 234, 2 Cond. Rep. 380, 382.

National Exch. Bank v. *Peters,* 144 U. S. 570, 572-3, 12 S. Ct. 767, 36 L. ed. 546.

In re Heath, 144 U. S. 92, 93, 12 S. Ct. 615, 36 L. ed. 359.

3. "Certainly an incidental power can avail neither to create powers which, expressly or by reasonable implication, are withheld nor to enlarge powers given; but only to carry into effect those which are granted."

First National Bank v. *Missouri,* 263 U. S. 640, 649.

The *litera legis* is decisive of this case. The Act nowhere gives to the Board, or to its receivers, the right to enforce the claims of creditors against shareholders. The history and the express provisions of the Act unmistakably evidence the intention of the Congress that neither the Board, nor its receivers, shall have that right. And now let us notice—

THE PRINCIPLES OF LOGICAL INTERPRETATION.

"Logical interpretation," says Salmond, "is that which departs from the letter of the law, and seeks elsewhere for some other and more satisfactory evidence of the true intention of the legislature."

Salmond states that there are two exceptions to the general principle that the *litera legis* alone governs.

> "There are two cases in which the *litera legis* need not be taken as conclusive, and in which the *sententia legis* may be sought from other indications. The first of these cases is that in which the letter of the law is *logically defective*, that is to say, when it fails to express some single, definite, coherent, and complete idea.
>
> "The logical defects by which the *litera legis* may be affected are three in number.
>
> "The first is ambiguity; for a statute, instead of meaning one thing, may mean two or more different things. In such case it is the right and duty of the courts to go behind the letter of the law, and to ascertain from other sources, as best they can, the true intention which has thus failed to attain perfect expression. * * *
>
> A second logical defect of statutory expression is inconsistency. A law, instead of having more meanings than one, may have none at all, the different parts of it being repugnant, so as to destroy each other's significance. In this case it is the duty of the judicature to ascertain in some other way the true *sententia legis*, and to correct the letter of the law accordingly.
>
> Lastly, the law may be logically defective by reason of its incompleteness. The text, though neither ambiguous nor inconsistent, may contain some *lacuna* which prevents it from expressing any logically complete idea. For example, where there are two alternative cases, the law may make provision for one of them, and remain silent as to the other.

> Such omissions the courts may lawfully supply b way of logical interpretation. It is to be noted however, that the omission must be such as to mak the statute logically incomplete. It is not enoug that the legislature meant more than it said, an failed to express its whole mind. If what it ha said is logically complete—giving expression to single, intelligible, and complete idea—the court have no lawful concern with anything else that th legislature may have meant but not said. Their dut is to apply the letter of the law, therefore they ma alter or add to it so far as is necessary to make it application possible, but they must do nothin more."
>
> (Jurisprudence, 6th ed. pp. 138-9)

There is no *logical* defect in the letter of the Act There is neither ambiguity, nor inconsistency, nor in completeness. The failure to give the Board or its re ceivers power to enforce shareholders' liability does no create a *lacuna* that prevents the act from expressing *logically complete idea.* This, for the reason that th shareholders' liability may be enforced by *creditor themselves.* (Pages 47-49, 60, *supra.*)

The ideas—*the logically complete ideas*—which th Act expresses are, *inter alia,* these:

1. That whenever a joint-stock land bank de faults the Federal Farm Loan Board may appoint receiver, who under the direction and control of th Board, or on the order of a court of competent juris diction, may convert into cash all the property an assets of the said *bank* and pay over the proceeds t the Treasury subject to the order of the Board.

2. That the shareholders of a joint-stock lan bank shall be severally liable, equally and ratably to *creditors* on all the bank's contracts, debts an engagements to a specified extent, and that, o course, the creditors alone may enforce the liabilit of shareholders.

The mere creation of the liability without more gives the creditors, as a matter of law, the right to enforce that liability. If it were necessary not only to create the liability, *but to expressly empower some one to enforce it,* then it might be contended that the Act was logically defective. Obviously, the mere failure to grant that power to the Board, or its receivers, is not a logical defect, since the creditors have that power. The Congress clearly intended that the Board should be responsible for reducing to cash *all the assets and liabilities of every insolvent bank,* and that if these proved insufficient to satisfy all claims, to leave—just as a great many state statutes and constitutions have left—to the creditors themselves the enforcement of statutory claims against *shareholders.* (Pages 47-9, 60, *supra.*) *These claims are no part of the assets of an insolvent bank.*

The second exception is stated by Salmond thus:

> "It has been already said that there are two cases in which logical interpretation is entitled to supersede grammatical. The first of these, namely, that of some logical defect in the *litera legis,* has been considered. The second is that in which the text leads to a result so unreasonable that it is self-evident that the legislature could not have meant what it has said. For example, there may be some obvious clerical error in the text, such as a reference to a section by the wrong number, or the omission of a negative in some passage in which it is clearly required.
>
> In considering the logical defects of the *litera legis,* we have tacitly assumed that by going behind the defective text it is always possible to discover a logically perfect *sententia legis.* We have assumed that the whole duty of the courts is to ascertain the true and perfect intention which has received imperfect expression. This is not so, however. In a great number of cases the defects of the *litera legis* are simply the manifestation of corre-

sponding defects in the *sententia.* If the legislature speaks ambiguously, it is often because there is no single and definite meaning to be expressed. If the words of the legislature are self-contradictory, it is possibly due to some repugnancy and confusion in the intention itself. If the text contains omissions which make it logically imperfect, the reason is more often that the case in question has not occurred to the mind of the legislature, than that there exists with respect to it a real intention which by inadvertence has not been expressed.

What, then, is the rule of interpretation in such cases? May the courts correct and supplement the defective *sententia legis,* as well as the defective *litera legis?* The answer is that they may and must. If the letter of the law is logically defective, it must be made logically perfect, and it makes no difference in this respect whether the defect does or does not correspond to one in the *sententia legis* itself. Where there is a genuine and perfect intention lying behind the defective text, the courts must ascertain and give effect to it; where there is none, they must ascertain and give effect to the intention which the legislature presumably would have had, if the ambiguity, inconsistency, or omission had been called to mind. This may be regarded as the *dormant* or *latent* intention of the legislature, and it is this which must be sought for as a substitute in the absence of any real and conscious intention.

In the case of the *sententia,* as formerly in that of the *litera legis,* it is to be noticed that the only defects which the courts may remedy are logical defects. That the intention of the legislature is ethically defective, is not a fact with which the judicature has any concern. The *sententia legis* might have been wiser, juster, or more expedient, had it been wider, or narrower, or other than it actually is. But the courts have no authority to detract from it, add to it, or alter it, on that account. It may be that had a certain case been brought to the notice of the legislature, the statute would have been extended to cover it; but so long as it is logically complete and workable without the inclusion of this case, it must

stand as it is. If a statute makes a provision as to sheep, which in common sense ought to have been extended to goats also, this is the affair of the legislature, not of the courts. To correct the *sententia legis* on logical grounds is a true process of interpretation. It fulfils the ultimate or dormant, if not the immediate or conscious intention of the legislature. But to correct it on ethical grounds is to assume and exercise legislative power." (pp. 139-41.)

If the foregoing is free judicial decision, the respondent is free to make the most of it. We quoted the foregoing excerpt only to show that the Circuit Court of Appeals has gone far beyond the very liberal rules stated by the distinguished jurist above mentioned. Its decision is condemned by the principles above stated, and finds no support in the enlightened views of the no less distinguished Judge Cardozo, who believes that courts should not "travel beyond the walls of the interstices, the bounds set to judicial innovation by precedent and custom." (The Nature of the Judicial Process, pp. 126-41.) The conclusion is irresistible that the court below assumed and exercised legislative power contrary to the Constitution, under even the most liberal view of the judicial function.

Since there is no *logical* defect in either the *litera legis*, or the *sententia legis*, the plain provisions of the Act must control. (Authorities, pp. 52, 63-66, *infra*.) A great many state statutes and constitutions impose a double liability on shareholders in favor of creditors without more. These statutes and constitutions are of long standing. It is almost universally held that only *creditors* may enforce this liability. The Congress has also imposed a double liability on shareholders of joint-stock land banks in favor of cred-

itors. It did not give the Federal Farm Loan Board, or its receivers power to enforce the liability of shareholders to creditors. Consequently it *prohibited* the Board and its receivers from exercising that power. The result is that only creditors can enforce the liability in question. Certainly it would be absurd to say that this result is so unreasonable that it is self-evident that the Congress could not have meant what it said, or that it did not say all that it intended to say.

THE ARGUMENT AB INCONVENIENTI.

Respondent's argument in the court below was largely an argument *ab inconvenienti*. It would be so much cheaper in time and money if the receiver could enforce shareholders' liability, etc. But, as has been said by this Court a great many times:

> "* * if the intention of the legislature be expressed in terms which are sufficiently intelligible to leave no doubt in the mind when the words are taken in their ordinary sense, it would be going a great way to say that a strained interpretation must be put upon them to avoid inconvenience which ought to have been contemplated in the legislature when the act was passed, and which, in their opinion, was probably overbalanced by the particular advantages it was calculated to produce." (*U. S.* v. *Fisher*, 2 Cranch. 358, 2 L. ed. 304, by Mr. Chief Justice Marshall, 1 Cond. Rep. 421, 425.)

> "It is better to submit to a temporary inconvenience than to set the laws all afloat by laying down a canon of construction which leaves the plain words and seeks to spell out, or guess at, the supposed intent of the legislature, contrary to or supplementary to that which is clearly embodied in the words it has used." *Merritt* v. *Welsh*, 104 U. S. 694, 702, 26 L. ed. 896, by Mr. Justice Bradley.

"When a statute is clear and imperative, reasoning *ab inconvenienti* is of no avail. It is the duty of the court to execute it." *The Cherokee Tobacco*, 11 Wall. 616, 620, 26 L. ed. 896, by Mr. Justice Swayne.

The argument *ab inconvenienti* does not address itself to the court with much force where it amounts merely to an assertion that an act "is defective in some of its details, and does not reach all of the cases which ought to be provided for." *U. S.* v. *Dickson*, 15 Pet. 141, 164, 10 L. ed. 689.

Now let us notice the opinion of the Circuit Court of Appeals.

VI.

The Circuit Court of Appeals disregarded the plain language of the Act, and rested its judgment upon (a) the erroneous assumption that the purpose of the Act was to pay the debts of insolvent banks, and (b) a clause of the National Bank Act that was omitted from the Federal Farm Loan Act.

The Court quite correctly holds that the powers of the Board are not limited to those granted by section 831. (R. 15.) What apparently failed to impress the Court, however, was:

1. The fact that in the most detailed grant of powers made throughout the act,[8] the power to assess shareholders, or the power to authorize receivers to enforce shareholders' liability, was not even mentioned, much less expressly granted.

2. That the lack of power to assess shareholders and enforce shareholders' liability to creditors could in no way prevent the Board from either performing any duty imposed upon it or exercising any power expressly granted to it.

Without citing any provision that was ambiguous or in need of interpretation, the Court then states that "the meaning of the provisions of the Act must be gained not only from its words but also from its purposes" and quotes the title of the Act. (R. 15.) We have already dis-

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8. 12 U. S. C. A. §§ 641, 642, 651, 652, 653, 654, 656, 658, 659, 662, 663, 664, 672, 673, 675, 678, 681, 694, 695, 713, 714, 719, 721, 741, 743, 754, 755, 761 (3), 771 (2), 771 (4) (b), 771 (8) 771 (9), 771 (10), 781, 781 (4) (b), 781 (9), 801, 808, 817, 821, 822, 823, 831, 841, 842, 853, 856, 861, 862, 864, 872, 881, 882, 884, 893, 914, 951, 952, 953, 961, 962, 964, 965, 972, 991.

cussed the title and purposes of the Act (pp. 55-58, *supra*). The Court then concludes:

1. That the Congress intended that "during the organization and establishment of" the banks and associations provided for in said Act "and during their successful operation" they should be "under the supervision, direction and control of the Board". *We agree. It should be observed, however, that none of these matters rest in the "purposes" of the Act, apart from its language, but are expressly provided for in specific sections of the Act.*

2. That "it was anticipated that there would be cases of insolvency and failure"—*We agree—;* that "in such cases the Association or Bank would cease to function normally"—*Well, yes*—that "if creditors, probably widely scattered, were to be protected and debtors compelled to meet their obligations, some agency, other than the Bank or the Association, would have to intervene." (R. 15-16.)

Yes, with the reservation that the Act itself expressly provides to what extent creditors shall be protected, how their rights shall be enforced, the means by which the intervention shall be accomplished, the powers of the Board over insolvent banks and the powers and duties of receivers appointed by the Board.

3. That "it was one of the purposes of the Act to extend supervision of the Board so as to cover such cases is evidenced by the fact that it was authorized to find and declare insolvency and to appoint receivers." (R. 16.)

Yes, if by "such cases" is meant cases of "insolvency and failure." *But what are the Board's powers in such cases?* Moreover, that it was the intention of the Congress that the Board should not have the power to enforce shareholders' liability to creditors is evidenced by the fact that the Act created shareholders' liability to creditors, which, in the absence of a provision to the contrary, gave creditors the exclusive right to enforce it, and the fact that the Act nowhere gives the Board

power to enforce that liability, or to assess shareholders.

4. That "as one of the purposes of the Act, it was provided that, in addition to the capital stock and general assets, there should be an individual liability of stockholders, available for the debts in case of insolvency." (R. 16.)

We should not say that it was available *only* in the case of insolvency. But what if it were? *Available to whom?* The liability of stockholders is not an asset of the bank. It should not be loosely grouped with "capital stock and general assets." Power of the Board to assess stockholders and the Receiver's power to enforce creditors' rights can not be obtained merely by saying that the Board has supervision of insolvent banks and that in addition to capital stock and general assets the Act provides that there shall "be an individual liability of stockholders for the debts in case of insolvency."

The Court then refers to section 651, (of 12 U. S. C. A.), which provides that there shall be established in the Department of the Treasury a bureau (the Federal Farm Bureau) "charged with the execution of this chapter", "under the general supervision of" the Federal Farm Loan Board (Rec. 16). It then says:

"To 'execute' means: 'to follow out into effect' (Oxford Dict.); 'to carry through so as to effect, pursue to the end, accomplish, finish, put into force' (Standard Dict.). (Rec. 16)

Observe, please, by what means the court then obtains the power to assess shareholders. After the preliminaries above noted, it begins thus: (Italics ours)

"*If* one of the purposes of the Act is to carry insolvent concerns through liquidation and *pay their debts*, then 'execution canot be complete until that purpose has been accomplished. • • •

Speaking of the Federal Farm Loan Act, Section 641 provides: 'Its administration shall be under the

direction and control of' the Board. 'Administration' means the act of administering, especially direction or oversight of any office, service or employment, etc., management of public affairs. 'Direction and control' import authority to command what shall be done, and to require obedience to those commands. It is to be noted that it is not only solvent and going concerns that are placed under the supervision, direction and control of the Board, but the whole Act is to be executed and administered under the supervision, direction and control of the Board. These provisions can only mean that there is the right in the Board to exercise those powers until the full accomplishment of the purposes of the act, one of which *is* to *pay the debts of insolvent concerns.* (*Cook County Nat. Bk.* v. *U. S.* 107 U. S. 445, 448.)" (R. 16).

What was *adumbrated* at first, and *conditionally* stated later, flowers finally into *positive* assertion:

Purposes of Act; Board's power over organization and successful operation of banks; Board's power over insolvent banks; provision that in addition to "capital stock and general assets" there should be individual liability of stockholders available to pay debts in case of insolvency; IF purpose to *pay debts, then Board must accomplish purpose; Board to administer* Act, *and then:*

"These provisions can only mean that there is the right in the Board to exercise those powers until the full accomplishment of the purposes, one of which *IS to pay the debts of insolvent concerns.*"

The Court has simply disregarded the plain language of the various sections of the Act, and while professing to ascertain its purposes, (*apart from relevant sections!*), has read into it the product of its own inner-consciousness.

It is the purpose of the Act that an insolvent bank's *assets* shall be devoted to the payment of its creditors,

because the *Act* makes express provision therefor. The *Act* also provides just what the Board may and may not do in the premises. There is no need to search for the "purposes" of the Act, apart from its plain language in order to arrive at *that* conclusion. But it is *not* the purpose of the Act *to pay the debts of an insolvent bank.* It is *not* the purpose of the Act that the Board shall assess stockholders, or that it shall have power to authorize its receiver to enforce shareholders' liability to *creditors.* If it was the intention of the Congress that the Board and its receivers should have this power "it would have been easy to say so." The use of the National Bank Act, as a model right down to the very clause that would have granted the power in question, and the deliberate omission of that very vital provision, despite all the amendments, conferences, debates, etc., demonstrate that the Congress purposely withheld the power.

Obviously, there is the widest difference between a purpose to *pay the debts* of an insolvent bank, and the policy that an insolvent bank's *assets* shall be converted into cash under the direction of the Board, or of a court of competent jurisdiction, and paid into the Treasury subject to the order of the Board. The liability of shareholders to creditors is not *per se* a part of a bank's assets, neither is it made so by the act. The Board can *execute* and *administer* the act and *supervise, regulate,* and *control* the *organization and establishment of banks and associations, and the conduct of their business,* and *appoint receivers for them,* and, when they are insolvent, *collect their debts and sell their property,*—it can do all these things *by virtue of specific sections of the Act expressly conferring the power to do so, and not by virtue of some supposed purpose of the Act apart from its plain language.* The Board cannot, however, enforce

shareholders' liability to creditors. That liability is no part of a bank's assets. The enforcement of it by the Board was *prohibited* by the Congress because (a) the Board was not granted the power to enforce it, (b) the right to enforce it was granted to creditors, (c) the power to enforce shareholders' liability to creditors is not necessary or requisite to the performance of any duties that were imposed upon, or the exercise of any power that was granted to, the Board.

Section 651, which provides for the creation of the Federal Farm Bureau in the Department of the Treasury "charged with the execution of this chapter" under the "general supervision of" the Federal Farm Loan Board, merely hooks up the Farm Loan Board with an existing department of Government.

It has never heretofore been supposed that a provision that an act shall be *executed* by the executive officers of Government gave them the power to do as they pleased. The very provision that *the Act* shall be executed by them is both a franchise and a restraint. And so is the provision of § 641 that the act shall be "administered" under the direction and control of the Federal Farm Loan Board. The *Act* defines the ambit of the Board's power. It does not give them *carte blanche* (pp. 46-52, *supra*). For instance, some of the avowed purposes of the act are to "furnish a market for United States bonds, to create Government depositaries and financial agents for the United States." And yet the Board cannot forgive the Allied debt, however beneficial that might be to the people of the United States, nor coerce the purchase of United States bonds by the general public. The *Act* must be looked to. Whence comes the power of the Board to enforce the rights of creditors? Certainly, not from the *Act*.

In

United States v. *Standard Brewery*, 251 U. S. 210, 217, 64 L. ed. 229, 40 S. Ct. 139

this Court said:

> "As to the insistence that the Internal Revenue Department has determined that a beverage containing one-half of one per cent. of alcohol should be regarded as intoxicating within the intendment of the act before us little need be said. *Nothing in the act remits the determination of that question to the decision of the revenue officers of the Government.* While entitled to respect, as such decisions are, *they cannot enlarge the meaning of a statute enacted by Congress. Administrative ruling cannot add to the terms of an act of Congress and make conduct criminal which such laws leave untouched. Waite* v. *Macy*, 246 U. S. 606; *United States* v. *George*, 228 U. S. 14, 20; *United States* v. *United Verde Copper Co.*, 196 U. S. 207, 215."

The case of

Cook County National Bank v. *United States*, 107 U. S. 445, 448,

has no bearing on the case at bar. That case arose under the National Bank Act. Of course that act provided everything

> "essential to the formation of the banks, the issue, security, and redemption of their notes, the winding up of the institutions, and the distribution of their effects."

It did this, not by reason of the *purposes* of the Act, apart from its language, but by means of an *express* provision that the receiver appointed by the Comptroller might, under the latter's direction and control, *enforce the individual liability of stockholders* (p. 450).

The Court then repeats that

> "Appellee's argument that the Board is without power to make such assessments is based *wholly*

upon the assumption that its powers are only those found in Section 831, and that the provisions in paragraphs (i) and (j) of that section do not relate to any other supervision than that incidental to the powers enumerated in that section." (R. 16-17).

This, we think, is an exceedingly narrow interpretation of appellee's brief in the lower court. After demolishing that man of straw the Court continues thus:

"Under the National Banking Act, called Banking Act, there is no specific provision for the making of an assessment. The matter was before the Supreme Court in 1869 in *Kennedy* v. *Gibson*, 8 Wall. 498, and the right was upheld." (R. 17).

That act then provided, just as it now provides, that the receiver appointed by the comptroller might,

"if necessary to pay the debts of such association, enforce the individual liability provided by the 12th Section of this Act"—viz: the individual liability of stockholders (p. 499).

Of course, if the receiver, under the direction of the comptroller, could enforce the individual liability of stockholders, the comptroller had the incidental power to determine the amount that would be needed to pay the debts of an insolvent association and prorate that amount among the different stockholders. *That is why the comptroller had power to assess stockholders.* It was a mere incident to the exercise of a power expressly conferred by the National Bank Act. The case has absolutely no application to the facts in the case at bar.

Let us now take up that part of the court's opinion that treats of the power of the Board to authorize the receiver to enforce shareholders' liability.

The reasoning of the Court is interesting. The Court first refers to the failure of the Congress to include in the Federal Farm Loan Act a significant clause of a section of the National Bank Act that undeniably was used as a guide when the section of the Federal Farm Loan Act that treats of the powers of the Board and its receivers, was drafted. (R. 18-19.) That clause is as follows:

> "and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders."

The Court admits that "the omission standing alone may indicate an intention to withhold from receivers" appointed by the Federal Farm Loan Board the right to enforce shareholders' liability to creditors; also that

> "if we found no other provision authorizing the Board to direct such actions, appellee's contention would prevail." (R. 19.)

Ordinarily, one would expect that a provision of the Federal Farm Loan Act so authorizing the Board would be quoted, or at least cited. But no, the Court leaves so solid and concrete a matter, and searches for the grant of power, not in the provisions of the Act, but in its purposes! (R. 19.) The court below apparently believed that its action was warranted by a decision of this Court:

> "While a court may not read into a statute language or purposes not there found, yet if that common-sense rule laid down in *U. S.* v. *Katz*, 271 U.S. 354, is to control, such interpretation must be given to the words employed, if it can be reasonably done, as will enable the instrumentality employed (in this case the Board) to effectively accomplish all the purposes of the statute." (R. 19.)

The fundamental difference between *United States* v. *Katz* and the case at bar is, that, whereas, this Court *had* a *particular section* of a statute to construe in the light of the purposes of the statute as gathered from *other specific sections,* the Circuit Court of Appeals had *no like section* to construe. It was obliged to create a grant of power out of whole cloth. It was compelled to find the power in the putative purposes of the Act, *wholly apart from any provision that could possibly confer the power.* As heretofore pointed out, it is *not* the purpose of the Act *to pay the debts* of insolvent banks (pp. 73-75, *supra*).

The Court then proceeds on its quest as follows:

> "There are many differences between the provisions relating to the powers of the Comptroller, found in the Banking Act, and those in the Farm Loan Act relating to the powers of the Board. The Banking Act adopted the method of enumerating the powers of the Comptroller, and although it has been held that he has incidental implied powers, for instance, the power to fix and direct the payment of the individual liability of stockholders (*Casey* v. *Galli,* 94 U. S. 673, 681), we do not find in the Banking Act any provision like that in Section 641, namely 'its administration shall be under the direction and control of the Board,' or like the provisions of Section 831 (i) and (j), set out above. We find some powers expressly given the Comptroller that are not so expressly given to the Board." (R. 19).

Didn't the Federal Farm Loan Act also "adopt the method of *enumerating* the powers" of the Board? (Sections cited in footnote, p. 70, *supra.*) And, of course, it is needless to point out again that the Comptroller can "fix and direct the payment of the individual liability of stockholders" simply because the National

Bank Act *expressly* provides that under the direction of the Comptroller the receiver may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders.

The following section of the United States Code, Title 12, ("Banks and Banking"), demonstrates that the Court is in error when it impliedly asserts that there is no provision in "the Banking Act" "like that in Section 641" of the Federal Farm Loan Act.

> SECTION 1. *Bureau of Comptroller of the Currency.* There shall be in the Department of the Treasury a bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds and, under the general supervision of the Federal Reserve Board, of all Federal reserve notes, the chief officer of which bureau shall be called the Comptroller of the Currency and shall perform his duties under the general directions of the Secretary of the Treasury. (R. S. § 324; Dec. 23, 1913, c. 6, § 10, 38 Stat. 261.)

This section derives from the Act of June 3, 1864, which laid the foundation of our National Banking System. (See 13 U. S. Stats. at Large, p. 99, § 1.)

In the one case, the Federal Farm Loan *Bureau,* a department of the Treasury, is charged with the execution of the Federal Farm Loan Act under the general supervision of the Federal Farm Loan *Board* (12 U. S. C. A. § 651)—or as expressed in § 641, the administration of the Act shall be under "the direction and control of the Federal Farm Loan Board," which is only another way of saying the same thing.

In the other case, another bureau attached to the Treasury "the chief officer of which bureau" is the

Comptroller, is charged with the execution of the National Bank Act, etc., under the general direction of the Secretary of the Treasury.

The authority of both these bureaus, and of the Board, and of the Comptroller must be found in the Acts which they are executing or administering.

We have already pointed out that Section 831 merely gives the Board power to regulate and supervise banks and associations formed under the Act; that the enforcement of shareholders' liability to creditors is not necessary or requisite to the exercise of this power, and that subsection (j) of section 831 adds nothing to the powers of the Board.

We think that the Court is correct in its conclusion that the omission from the Federal Farm Loan Act of the provisions of sections 192 and 194 of the National Bank Act is not important except in the particular discussed on pp. 86-91, *infra*. (R. 19-20.) The Board is given the express power to convert an insolvent bank's *assets* into cash and pay the proceeds into the Treasury subject to its order. Obviously, the money must be distributed among the persons entitled to it. The Board, or the Federal Farm Loan Bureau, or the Treasury department would, therefore, have the *incidental* power to require all persons having claims against the *bank* to file them, etc. Claimants would hardly get their money if they did *not* file claims; and it has been our experience that it is much easier to pay money to Government bureaus than it is to get money from them. Yes, claims, and amended claims, and explanations of claims, and affidavits, and inquiries concerning claims would be filed. There can be no doubt that this power of the Board would be exercised without an ex-

press grant of it. But the liability of shareholders to *creditors* is not a *corporate* asset. Neither is the power to enforce that liability necessary or requisite to the power to convert the *bank's* assets into cash and distribute the proceeds among persons having claims against the *bank*, or to any other power expressly granted to the Board or the receivers appointed by it.

The Court then states:

> "We find no purpose in the Farm Loan Act to give to the Board narrower powers than those given the Comptroller under the Banking Act. On the contrary, in Section 961 is found a provision broadening the Board's powers. It gives to the Board and the court control over certain acts that are by Section 192 of the Banking Act wholly under the control of the court." (R. 20.)

No purpose if we disregard the language of the Act, no. *But why wasn't the power granted?* Or, rather, where is the provision that grants it? And speaking of purpose, does the discrimination exercised by Congress, which is plainly manifested by the exclusion of this provision, the inclusion of that one, the fabrication of new provisions, and the combination of all of them into a lucid, harmonious whole, speak nothing of purpose? Is the rule, that not to grant is to prohibit, silent on that subject?

The Court then returns to

Kennedy v. *Gilson*, 8 Wall. 498, 505.

It quotes from the opinion in that case—

> "The receiver is the instrument of the comptroller. He is appointed by the comptroller, and the power of appointment carries with it the power of removal. It is for the comptroller to decide when it is necessary to institute proceedings against the

> stockholders to enforce their personal liability, and whether the whole or a part, and if only a part, how much, shall be collected. These questions are referred to his judgment and discretion, and his determination is conclusive. The stockholders cannot controvert it." (R. 20.)

and then makes the following assertion:

> "All of those things were true, regardless of the question as to whether the receiver was authorized by the act to bring a suit to establish the individual liability of the stockholders." (R. 20.)

On the contrary, they were true *because* that Act provided that under the direction and control of the Comptroller the receiver appointed by him might enforce stockholders' liability.

The Court then turns to

Richmond v. *Irons*, 121 U. S. 27, 48,

where it is said that in case of the involuntary liquidation of a National Bank the receiver appointed by the Comptroller was authorized and required to collect and apply the proper assets of the bank to the payment of its debts **and** TO ENFORCE THE INDIVIDUAL LIABILITY OF SHAREHOLDERS. This Court in that case said:

> "It thus appears that the enforcement of this liability is a part of the liquidation of the affairs of the bank; at least so closely connected with it as to constitute but one continuous transaction.
>
> "* * * The *two* subjects of applying the assets of the bank and enforcing the liability of the stockholders, *however otherwise distinct*, are *by the statute* made connected parts of the whole series of transactions which constitute the liquidation of the affairs of the bank."

The case distinguishes itself. The National Bank Act expressly provided that *these two distinct matters*—the

application of a bank's assets *and* the enforcement of stockholders' liability—*should be brought together.* It provided that under the direction and control of the Comptroller the receiver might

> "if necessary to pay the debts of such association, enforce the individual liability" of the stockholders.

From the foregoing premises, all of which we have endeavored to faithfully report, the Court below reaches the following conclusion:

> "We are of opinion that, without specific provision for suit by the receiver against the stockholders, the purpose of the Farm Loan Act was to provide a continuous, effective and complete means of liquidating the debts of insolvent concerns under the supervision, direction and control of the Board, and that the language in *Casey* v. *Galli,* 94 U. S. 673, 681, applies:
>
> 'It is sufficient * * * that the comptroller has ordered that each stockholder shall pay to the receiver the par of his stock. This order cannot be controverted in a suit against the stockholder. It is conclusive upon him, and makes it his duty to pay. (Citing *Kennedy* v. *Gibson,* 8 Wall. 498.)'
>
> We are of opinion that the Board had the right to make the assessment and direct the receiver to bring this suit." (R. 22.)

Means of liquidating the debts of insolvent concerns, yes! But not of enforcing the liability of shareholders to creditors by receivers.

Of course, *Casey* v. *Galli,* 94 U. S. 673, arose under the National Bank Act. The order of the Comptroller could not be controverted in that case because that act expressly empowered the Comptroller to authorize receivers appointed by him to enforce the liability of stockholders.

We respectfully submit that besides the fallacies above pointed out, the opinion in the case at bar also contains the following antinomy: It finds that the omission from the Federal Farm Loan Act of the clause

> "and may, if necessary to pay the debts of such association, enforce the individual liability" of the stockholders

is not conclusive against the power of the receiver to maintain this suit, and then bases the conclusion that the power exists upon cases arising under the National Bank Act—*or upon the very clause in question!*

It is undeniable that the court below exercised legislative power contrary to the Constitution. The Federal Farm Loan Act is plain, and there is no need of interpretation.

VII.

The fact that the Federal Farm Loan Act fails to grant to the Federal Farm Loan Board, not only the power to assess shareholders, but the power to direct its receivers to enforce shareholders' liability to creditors, conclusively proves that the Congress deliberately departed from the National Bank Act.

The foregoing fact, and the fact that creditors may enforce shareholders' liability in a court of equity, evidence the intention of the Congress that shareholders' liability to creditors, if any, should be determined by a court of equity in the district in which the insolvent bank was located, where shareholders could be heard in respect of all matters affecting them, and not by the fiat of a board in Washington without a day in court or other opportunity to be heard.

In respondent's brief in opposition to the petition in this Court, it is asserted that express power to assess shareholders is unnecessary. (Brief, p. 17 *et seq.*) It is there asserted that the power to assess may be implied, and reliance is placed upon *Kennedy* v. *Gibson,* 8 Wall. 498, *Casey* v. *Galli,* 94 U. S. 673, and other cases that arose under the National Bank Act.

It is needless to point out again that the power to assess was there "implied" *because the said act expressly provided that the Comptroller might direct the receivers appointed by him to enforce stockholders' liability.* (Pages 78-85, *supra.*)

The Federal Farm Loan Act fails to grant that all-important power. Consequently, the warrant in the

cases above mentioned for "implying" the power to assess does not exist in the case at bar.

We have already shown that there is no power granted to, nor duty imposed upon, the Federal Farm Loan Board to which the power to enforce shareholders' liability to creditors is necessary or requisite. (Pages 53-62, *supra.*) The same argument applies to the power to assess shareholders.

We have already seen that the mere creation of shareholders' liability to creditors, without more, gives to creditors the right to enforce shareholders' liability in a court of equity. (Pages 47-49, 60-61, *supra.*)

The foregoing facts, and the fact that the National Bank Act was used as a guide, except where changes were made "to overcome difficulties which had theretofore been shown to attach to the national banking plan," (p. 13, *supra*), clearly manifest an intention on the part of the Congress that shareholders should have their day in court in the important matter of their liability, and that the amount thereof should be fixed by a court of equity.

The plan of the Act as a whole is simply this: Joint-stock land banks shall at all times be under the supervision and control of the Federal Farm Loan Board. (It was apparently hoped that this would prevent irregular practices and large losses.) Upon default of any obligation the Board may appoint a receiver, who, under the control of the Board, or of a court of competent jurisdiction, may convert the *bank's* property and assets into cash and pay the proceeds into the Treasury, subject to the order of the Board. Shareholders' liability to creditors is not a *corporate* asset; and, of course, no creditor

would sue a shareholder if paid the amount of his claim by the Board. If the bank's assets prove to be insufficient, then creditors may enforce shareholders' liability in a court of equity, where the shareholders can be heard in respect of all matters that affect them.

Richmond v. *Irons*, 121 U. S. 27, 48.

United States v. *Knox*, 102 U. S. 422, 425.

Cheney v. *Scharmann*, 129 N. Y. S. 993.

If the Congress had intended that the amount of the liability of shareholders to creditors should be determined by the Board, "it would have been easy to say so." First, by *expressly granting the Board the power to determine the aforesaid amount*, or, second, *by expressly authorizing the Board to empower its receivers to enforce shareholders' liability*. Neither the direct, nor the indirect method was adopted. And respondent simply asks this Court to nullify the rule that *silence is prohibition*, and the rule concerning incidental powers, (pp. 42, 49, *supra*), when he asks that the essential powers involved be granted by means of the construction of an act that is so plain that construction has no office to perform.

The differences between the National Bank Act and the Federal Farm Loan Act are both numerous and striking. Let us notice only a few of them.

The former expressly confers power upon the Comptroller to enforce stockholders' liability to creditors, whereas the latter confers no like power upon the Federal Farm Loan Board.

The former confers the incidental power upon the Comptroller to assess stockholders, whereas the latter

confers no like power upon the Federal Farm Loan Board, either expressly or otherwise.

The former expressly empowers the Comptroller to direct persons having claims against an insolvent bank to present them and make legal proof thereof (12 U. S. C. A. § 193), whereas the latter contains no parallel provision.

The former expressly provides for the payment of dividends by receivers appointed by the Comptroller, and the distribution of the residue, if any, among stockholders (12 U. S. C. A. §§ 194, 197), whereas the latter contains no like provisions.

Why these differences? If ever the teleological argument is sound, it certainly is sound and applicable here. Before granting all these powers by means of an unconstitutional exercise of legislative power, it seems to us that the court below might well have endeavored to discover whether any reasons could be assigned for the differences between the two Acts. Clearly they are the result of design rather than accident.

National Banks, unlike the so-called banks organized pursuant to the Federal Farm Loan Act, issue their obligations which circulate as money, and are guaranteed by the United States. These obligations probably aggregate billions of dollars. It is essential, therefore, that the Treasury have absolute power to deal effectively with any national bank and its stockholders in case of insolvency. Otherwise the whole complex and delicate structure of credit, which rests upon confidence, might be impaired to the irreparable injury to the entire world. Power to assess stockholders and to enforce their liability to creditors is clearly essential, and consequently was granted

to the Comptroller by the National Bank Act. The case is entirely different so far as joint-stock land banks, etc., are concerned. The necessity for drastic bureaucratic action does not exist, and for that reason, no doubt, the power to assess shareholders and to enforce their liability to creditors was not granted by the Congress to the Federal Farm Loan Board.

Furthermore, this is farm legislature, and farmers have very little, if any, experience in dealing with government bureaus. It is also undeniable that the great majority of mankind dislike to deal with them. Their experience with them has, on the whole, been far from satisfactory. These bureaus lack flexibility, and appear wooden, autocratic, and inhuman.

Courts of equity are entirely different. The people have not only more experience of them, but more confidence in them. Moreover, it is of great convenience to stockholders to have the affairs of an insolvent bank administered by a court in the district in which the bank had conducted its business, rather than in far-off Washington by some government bureau. The Congress evidently intended that they should be heard on the question of the necessity of any assessment, and if so the amount. Only creditors and shareholders are interested in these questions. The United States have no pecuniary interest; they are in nowise liable; the currency can in no way be affected.

These, and other obvious considerations too numerous to mention, account for the striking differences between the two acts above mentioned. One cannot imagine that a court of equity would levy an assessment of one hundred per cent in the case of a default where an assessment of five per cent would be ample.

Furthermore, where the amount of each shareholder's liability is determined by a court of equity, the validity of the alleged contracts, debts, etc., of the bank for which shareholders are liable, is also involved. On this important matter the shareholders can be heard. If officers or directors have been recreant, proof of it can be obtained, and their liability can thereafter be established.

At any rate, the Congress has acted, and it is not for the courts to substitute their notions or ideas for those of the Congress under the guise of judicial construction. (Pages 36, 39, 44-5, *supra*.)

VIII.

Section 37 of 12 U. S. C. A. has no application to Joint-Stock Land Banks, or to the Facts disclosed by the Record.

In the court below respondent relied upon section 37 of 12 U. S. C. A., which is as follows:

> "**§ 37. Associations governed by chapter.** The provisions of this chapter, which are expressed without restrictive words, as applying to 'national banking associations,' or to 'associations,' apply to all associations organized to carry on the business of banking under any Act of Congress."

The chapter referred to in section 37 is chapter 2, which deals exclusively with national banks.

Respondent argued that section 37 made section 192 of 12 U. S. C. A. (which provides that the Comptroller of the Currency may appoint and direct receivers of national banks) applicable to the Federal Farm Loan Act, and that consequently a receiver appointed by the Federal Farm Loan Board had all the powers of a receiver appointed by the Comptroller!

The absurdity of the argument is obvious.

1. If section 192 of 12 U. S. C. A. is applicable, then the Comptroller of the Currency would have the power to appoint a receiver of joint-stock land banks, despite the express provisions of the Federal Farm Loan Act that the Federal Farm Loan Board shall appoint receivers of insolvent joint-stock land banks, and that the Federal Farm Loan Bureau, not the Comptroller, shall execute the Act.

2. If we assume that the Comptroller of the Currency has the power to appoint receivers of joint-stock land banks, and that a receiver *so appointed* would have power to enforce shareholders' liability

to creditors, we shall get nowhere, since the undisputed fact is that *respondent* was not appointed by the Comptroller! *He expressly alleges that he was appointed by the Federal Farm Loan Board.* (R. 1.)

3. If respondent had been appointed by the Comptroller, the direction of the latter to enforce shareholders' liability would be essential. (*Kennedy* v. *Gibson*, 8 Wall. 498.) The respondent, however, does not claim that he was authorized to sue by the Comptroller. He predicates his right to sue solely upon the direction of the Federal Farm Loan Board. (R. 2.)

4. If section 192 is applicable, then the Comptroller of the Currency would simply have power to (a) appoint a receiver of joint-stock land banks, etc., and (b) direct him to enforce shareholders' liability to creditors.

The applicability of § 192 to joint-stock land banks, etc., formed under the Federal Farm Loan Act, could not give the Federal Farm Loan Board the powers enjoyed by the Comptroller of the Currency. This for the reason that the powers of the Board are defined by the Federal Farm Loan Act.

5. The issue in the case at bar is *the right of respondent to maintain this action.* His alleged right rests *solely upon the direction of the Federal Farm Loan Board to sue.* (Pages 8-10, *supra.*)

Section 192 does not treat of the power of *receivers* appointed by the Comptroller, but of the power of the *Comptroller to appoint and direct them.*

The same thing is true of § 961. It deals with the powers of the *Federal Farm Loan Board,* which is given power to appoint and direct receivers.

Therefore, if section 192 were applicable to joint-stock land banks by virtue of § 37 of 12 U. S. C. A., it would profit the *respondent* nothing. Why not? For the obvious reason, that in that case the Comptroller would merely have a power which he has never exercised, viz., *the power to appoint a receiver and direct him to sue,* or to *accept* the appointment of *respondent,* and direct him to sue.

It is clear that respondent's logic is bad, even if his premises were true. The conclusion that *he has the right to maintain this action*, cannot be logically deduced from the premises stated by him, even if we assume that they are true.

But his premises are false.

Section 37 of 12 U. S. C. A. derives from section 5157 of the Revised Statutes of 1873-74. Section 5157 is set forth in the margin.[9] When the Revised Statutes were enacted, there were then *at least three* acts under which national banks had, or could have, been organized. They were:

1. The Act of February 25, 1863, Ch. LVIII, 12 U. S. Stats. at L., p. 665.
2. The Act of June 3, 1864, Ch. CVI, 13 U. S. Stats. at L., p. 99.
3. The Act of July 12, 1870, Ch. CCLII, 16 U. S. Stats. at L., p. 251.

The Act last mentioned is expressly referred to in sections 5185-86 of the Revised Statutes.

Title LXII of the Revised Statutes treats of National Banks. Chapter one of that title is concerned with the organization and powers of "associations for carrying on the business of banking under this Title." The chapter in question is constituted of sections taken almost exclusively from the Act of June 3, 1864. And in this chapter banks are called indifferently "associations" and "national banking associations."

---

9. "Sec. 5157. The provisions of chapters two, three, and four of this Title, which are expressed without restrictive words, as applying to 'national banking associations', or to "associations', apply to all associations organized to carry on the business of banking under any act of Congress."

In order to recognize banks that had been organized under other acts, there was included in chapter one of Title LXII of the Revised Statutes, the provision set forth in the margin.[10]

Section 5157 of the Revised Statutes (p. 94, *supra*) is in Chapter two of Title LXII. The following tabulation shows the subject matter of Chapters two, three and four of Title LXII:

"CHAPTER TWO.
OBTAINING AND ISSUING CIRCULATING NOTES."
(Sections 5157-89.)

"CHAPTER THREE.
REGULATION OF THE BANKING BUSINESS."
(Sections 5190-5219.)

"CHAPTER FOUR.
DISSOLUTION AND RECEIVERSHIP."
(Sections 5220-43.)

The reason for section 5157 is clear. And at that time there existed only national banks, or "associations organized to carry on the *business of banking.*" The wording of Section 5157 was perfectly proper *at that time.*

However, by the time the latest or current code was to be compiled, the Congress had authorized not only Fed-

10. "Sec. 5156. Nothing in this Title shall affect any appointments made, acts done, or proceedings had or commenced prior to the third day of June, eighteen hundred and sixty-four, in or toward the organization of any national banking association under the act of February twenty-five, eighteen hundred and sixty-three; but all associations which, on the third day of June, eighteen hundred and sixty-four, were organized or commenced to be organized under that act, shall enjoy all the rights and privileges granted, and be subject to all the duties, liabilities, and restrictions imposed by this Title, notwithstanding all the steps prescribed by this Title for the organization of associations were not pursued, if such associations were duly organized under that act."

eral Reserve banks, but the so-called "banks" provided for in the Federal Farm Loan Act. The compilers of that Code followed the general language of section 5157 of the Revised Statutes, or rather they converted § 5157 of the Revised Statutes into § 37 of the U. S. C. Section 37 of 12 U. S. C. A. is set forth on p. 92, *supra*.

They also followed section 5156 of the Revised Statutes in the fabrication of section 39 of 12 U. S. C., which is set forth in the margin.[10]

Title 12 of U. S. C. A. is "Banks and Banking." The following tabulation taken from 12 U. S. C. A. shows the subject matter of the respective chapters of Title 12:

"CHAP. SEC.

1. The Comptroller of the Currency..... 1
2. National banks..... 21
3. Federal Reserve system..... 221
4. Taxation 531
5. Crimes and offenses..... 581
6. Foreign banking..... 601
7. **Federal farm loans**..... 641
8. Federal intermediate credit banks.....1021
9. National Agricultural Credit Corporations .....1151"

10. "§ 39. Reservation of rights of associations organized under Act of 1863. Nothing in this chapter shall affect any appointments made, acts done, or proceedings had or commenced prior to the 3d day of June, 1864, in or toward the organization of any national banking association under the Act of February 25, 1863; but all associations which, on the 3d day of June, 1864, were organized or commenced to be organized under that Act, shall enjoy all the rights and privileges granted, and be subject to all the duties, liabilities, and restrictions imposed by this chapter, notwithstanding all the steps prescribed by this chapter for the organization of associations were not pursued, if such associations were duly organized under that Act." (R. S. § 5156.)

We shall not burden the Court with an analysis of section 37 of 12 U. S. C. A. nor a compilation of the provisions of chapter two which might possibly be applicable to other "associations organized to carry on the business of banking under any Act of Congress." It is not necessary to do so, not only for the reasons heretofore stated, but for the following additional reasons:

1. Joint-stock land banks are not "associations organized to carry on the business of banking," within the meaning of section 37 of 12 U. S. C. A. This is particularly true in view of the history of the provision. It is also true by virtue of what joint-stock land banks may and may not do. (Sec. §§ 811-23 and 781-91 of 12 U. S. C. A.) Of course they might be made banks by definition, but we submit that they were not organized to carry on the business of banking. They have only a few of the powers of banks, but not the essential powers that distinguish banks from other business corporations. They do not conduct the "business of banking" neither were they organized for that purpose, nor *can* they carry on that business. They are not simply *banks*, but *land* banks. They were organized, not to carry on the business of banking, but to make *farm loans*, and to perform the other non-banking duties specified in the act. Even if they were called *banks* without qualification, the matter would not be different. Merely calling these agencies *banks* does not make them so, either in fact, or by definition, within the meaning of Section 37. There was some discussion of these matters in

Smith v. *Kansas City Title & Trust Co.*, 255 U. S. 180,

but the validity of the Federal Farm Loan Act was rested upon the power of the Congress to create and use these so-called "banks" as *agencies* of the Federal Government, and not upon their being banks.

2. The Federal Farm Loan Act is complete in itself. Joint-stock land banks not having been authorized to carry on the business of banking, the Federal Farm Loan Act varies at all points from the provisions of Chapter 2 of 12 U. S. C. A. Compare, if you will, these parallel sections taken from chapter 2 and the Federal Farm Loan Act:

Chapter two	Farm Loan Act
§ 24	§ 781, 791, 811-16
§ 51	§ 691, 815
§ 191-92	§ 831
§ 1 (Chap. 1)	§ 641, 651

We ask counsel for respondent to pick out the provisions of chapter two that are applicable to joint-stock land banks and state why they are applicable.

3. In any event, the provisions of chapter two "which are expressed without restrictive words" would be applicable to other banks only where the Congress had not expressly or by necessary implication otherwise provided. They are *general provisions* which *specific inconsistent provisions* in another act would render inapplicable. Compare, for instance, section 192 (p. 17, *supra*) with section 961 (p. 16, *supra*). The one provides that the Comptroller shall appoint a receiver in certain instances, the other that the Federal Farm Loan Board may appoint a receiver in *any* case of default. The one gives the Comptroller power to direct his receiver, the other gives the Federal Farm Loan Board power to direct its receiver. The one expressly provides that the Comptroller may direct his receiver to enforce stockholders' liability [illegible]reditors, whereas, the other just as plainly provides [illegible]he Federal Farm Loan Board shall *not* have the power to so direct its receiver. Which con-

trols? The provisions of the Federal Farm Loan Act, of course.

Townsend v. *Little*, 109 U. S. 504, 3 S. Ct. 357.

United States v. *Matthews*, 173 U. S. 381, 387, 19 S. Ct. 413, 43 L. ed. 740.

Cook County National Bank v. *United States*, 107 U. S. 445, 2 S. Ct. 561, 27 L. ed. 537.

Washington v. *Miller*, 235 U. S. 422, 35 S. Ct. 119, 59 L. ed. 295.

United States v. *Nix*, 189 U. S. 199, 23 S. Ct. 495, 47 L. ed. 775.

Hemmer v. *United States*, (C. C. A. 8th Cir.) 204 Fed. 898.

Partee v. *St. Louis & S. F. R. R. Co.*, (C. C. A. 8th Cir.) 204 Fed. 970.

Rodgers v. *United States*, 36 Ct. Cl. 266.

Mead v. *Bagnall*, 15 Wis. 156.

Compare § 1301 of 12 U. S. C. A. (p. 21, *supra*) with § 961. Why these differences?

The respondent will also doubtless cite the case of

Krauthoff v. *Kansas City Joint-Stock Land Bank of Kansas City*, 23 Fed. (2d.) 71.

The question in that case was whether the District Court had erred in refusing to oust a receiver appointed by the Federal Farm Loan Board. Manifestly that is not the question presented here. There are some dicta in the opinion in that case upon which the respondent will doubtless attempt to base the power claimed by him. We can understand why he should attempt to do so, since

neither the Federal Farm Loan Act, nor the opinion rendered by the court below will sustain the power in question. However, the dicta are so manifestly devoid of strength as to require no comment from us.

The other case bearing the same title—

Krauthoff v. *Kansas City Joint-Stock Land Bank,* 31 Fed. (2d) 75,

is also not in point for the reasons above stated. The dicta in that case are wholly without substantial foundation, since they rest upon the opinion rendered by the Circuit Court of Appeals in the case at bar.

Respondent also contended that petitioner was simply quibbling over a mere matter of *procedure.* Of course this contention is groundless. We assert that respondent neither owns, nor represents, the *cause of action* sought to be enforced. (Pages 8-9, *supra.*)

Moreover, it is of the greatest importance that payment shall not be made to *anyone* who has not the right to receive it. Otherwise the persons having that right will force the petitioner to pay again.

We ask that the judgment of the Circuit Court of Appeals be reversed.

Respectfully,

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APPENDIX.

"POWERS OF FEDERAL FARM LOAN BOARD GENERALLY.

Sec. 831. ENUMERATION. The Federal Farm Loan Board shall have power—

(a) Organizing and chartering banks and loan associations; authorizing increase of stock. To organize and charter Federal land banks, and to charter national farm loan associations and joint-stock land banks subject to the provisions of this chapter, and in its discretion to authorize them to increase their capital stock. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(b) Reviewing and altering interest rates. To review and alter at its discretion the rate of interest to be charged by Federal land banks for loans made by them under the provisions of this chapter, said rate to be uniform so far as practicable. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(c) Granting or refusing authority to issue bonds. To grant or refuse to Federal land banks, or joint-stock land banks, authority to make any specific issue of farm loan bonds. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(d) Making rules and regulations as to charges on loans. To make rules and regulations respecting the charges made to borrowers on loans under this chapter for expenses in appraisal, determination of title, and recording. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(e) Requiring reports, etc.; examining banks and associations. To require reports and statements of condition and to make examinations of all banks or associations doing business under the provisions of this chapter. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(f) Prescribing form and terms of bonds and surety bonds. To prescribe the form and terms of farm loan bonds, and the form, terms, and penal

sums of all surety bonds required under this chapter and of such other surety bonds as they shall deem necessary, such surety bonds to cover financial loss as well as faithful performance of duty. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(g) Regulating payments between banks. To require Federal land banks to pay forthwith to any Federal land bank their equitable proportion of any sums advanced by said land bank to pay the coupons of any other land bank, basing said required payments on the amount of farm loan bonds issued by each land bank and actually outstanding at the time of such requirement. (July 17, 1916, c. 245. Sec. 17, 39 Stat. 375.)

(h) Suspending or removal of directors, registrars, appraisers, and examiners. To suspend or to remove for cause any district director or any registrar, appraiser, examiner, or other official appointed by said board under authority of sections 651-664 of this chapter, the cause of such suspension or removal to be communicated forthwith in writing by the Federal Farm Loan Board to the person suspended or removed, and in case of a district director to the proper Federal land bank. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(i) Exercising supervisory authority over banks. To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(j) Incidental powers. To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this chapter. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375)."